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## Collective Labor Disputes in Post-Ceaușescu Romania

### Introduction

On December 8, 1991, the Romanian people approved a new, post-communist constitution.<sup>1</sup> The constitution included significant provisions

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A word about sources and translations is necessary. Much of the written material cited herein is available in computerized data bases. The British Broadcasting Corporation's Summary of World Broadcasts is particularly helpful, as it makes primary Romanian source material available in English translation.

A second major source of information cited herein is the Daily Press Summary, a service of the United States Embassy in Bucharest that translates the major Romanian newspapers and magazines and publishes an English-language summary thereof. Although sold widely among the foreign embassies and businesses in Bucharest, it is not generally available in the United States, insofar as the author knows. Even though it is not itself a direct primary source of information, it is very useful for tracking the basic features of Romanian public life. Citations herein include both the Daily Press Summary reference and that of the Romanian publication whose report it summarizes.

There is no standard English translation of Romanian statutes and other legal materials. For Law 15/1991 and the other Romanian labor statutes cited, the English translations of the United States Department of Commerce, NTIS Central & Eastern Europe Legal Texts, are used, albeit with extensive modifications by the author which seek to provide a translation that is both faithful to the original Romanian and accessible to the reader.

In addition to the foregoing, citation is made herein to several Romanian secondary legal sources and trade union documents not available in English. Translations of these materials, as well as of the official Romanian gazette (*Monitorul Oficial al României*) were made by the author. Finally, a number of references are made to the author's personal interviews of Romanian labor leaders and others, as well as to speeches made by such persons which the author attended. Some, but not all, of such references are based on contemporaneous notes made by the author.

1. According to Romania's Central Electoral Bureau, 76.5% of the voters approved the new constitution, 21.3% voted against its adoption and 2.2% of the

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recognizing workers' collective rights. Article 9 therein, Trade Unions, authorized the creation and existence of trade unions, as institutions which "contribute to the protection of the rights and the promotion of the professional, economic and social interests of employees."<sup>2</sup> Article 37, The Right to Associate, gave Romanians the right to "freely associate in . . . trade unions,"<sup>3</sup> while Article 38, Labor and the Social Protection of Labor, specified, *inter alia*, that "[t]he right to collective bargaining and the binding nature of collective agreements are guaranteed."<sup>4</sup> Finally, Article 40, The Right to Strike, provided as follows:

- (1) Employees have a right to strike to protect their professional, economic and social interests.
- (2) The law sets the conditions and limits for the exercise of this right as well as the guarantees required for providing essential public services.<sup>5</sup>

The first parliamentary body to function in Romania after the overthrow of its communist dictatorship in fact had already passed legislation to regulate the right to strike ten months earlier, in February 1991. Law 15/1991, Settlement of Collective Labor Disputes,<sup>6</sup> is one of a package of three major statutes Romania's parliament passed in 1991. Along with the other two statutes, Law 13/1991, Collective Labor Contracts,<sup>7</sup> and Law 54/1991, Activity of Trade Unions,<sup>8</sup> Law 15/1991 defines the scope within which the Romanian trade union movement may now legally operate.

The focus of this article is Law 15/1991. This article attempts to explain its provisions, especially its manifold restrictions on strikes, as a reaction of the National Salvation Front (NSF), the ruling political faction in Romania following the fall of the communist regime of Nicolae

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ballots were invalid. Gisbert H. Flanz, *Romania*, in 15 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 4 (Albert P. Blaustein & Gisbert H. Flanz eds., 1992). Parliament had approved the new constitution on November 21, 1991, by a vote of 414 in favor and 95 opposed. *Id.* at 3.

2. The complete text of Article 9 is, "Trade unions are set up and carry out their activity according to their statutes under the conditions of the law. They contribute to the protection of the rights and the promotion of the professional, economic, and social interests of employees." *Id.* at 6.

Placement of this article in Title I, along with others establishing the basic nature of the Romanian state and citizenship, and especially its placement immediately after Article 8, Pluralism and Political Parties, would suggest an intent to enshrine trade unions as the constitutionally recognized equivalent of political parties, with the latter to function in the political sphere and the former to operate in the economic and social, but not political, arenas. *Id.*

3. *Id.* at 12.

4. *Id.*

5. *Id.* at 13.

6. 1991 U.S. Dept. of Commerce, NTIS, Central & Eastern Europe Legal Texts, February 11, 1991, available in LEXIS, Europe Library, Alleur File.

7. 1991 U.S. Dept. of Commerce, NTIS, Central & Eastern Europe Legal Texts, February 8, 1991, available in LEXIS, Europe Library, Alleur File.

8. 1991 U.S. Dept. of Commerce, NTIS, Central & Eastern Europe Legal Texts, August 7, 1991, available in LEXIS, Europe Library, Alleur File.

Ceaușescu, to the political and economic threat of the trade union movement.

Almost two years before endorsing the new constitution, in December 1989, the Romanian people, at great and heroic risk to their lives, overthrew Nicolae and Elena Ceaușescu, Eastern Europe's most odious communist dictators.<sup>9</sup> The self-styled NSF immediately seized the reins of power. Although the NSF's initial appearance was that of a broad-based coalition of opponents of the Ceaușescu regime, it quickly became clear that former high-ranking communists, who had fallen from favor with the dictator, and their associates dominated the NSF.<sup>10</sup> Ion Iliescu,<sup>11</sup> Chairman of the NSF from its beginning, and Petre Roman,<sup>12</sup> whom Iliescu designated prime minister, led the NSF Council, a body established as Romania's interim government. The Council moved rapidly to consolidate control successfully over Romania's state institutions. As a result, the NSF and its initial governments charted the course of political and economic reform on which Romania has now embarked.

In the midst of the December 1989 revolution, independent trade unions also began forming. In short order Romania saw the birth of full-fledged national trade union confederations. The trade unions were soon pressuring the government to take actions contrary to what the NSF leaders believed was in the best interests of Romania's economic recovery. As early as January 1990, with spontaneous local efforts to force changes in factory management, the unions quickly grew capable of mounting strikes with nation-wide impact; by late 1990, the government was buffeted with almost non-stop labor unrest challenging major economic policies. The trade union movement had emerged as the strongest opposition to the NSF. The movement attacked both micro and macro economic issues, with targets ranging from forcing individual management changes in state enterprises to pressuring the government to forsake its price liberalization and privatization programs.

The NSF leaders realized by April 1990, that, as the people who would continue to control the major Romanian economic enterprises in the foreseeable future, it was in their best interests to curb the power of the burgeoning labor movement. Thus, during the next ten months, the government of Prime Minister Petre Roman and its allies in the Romanian parliament crafted labor legislation designed to remove the strike weapon as a significant factor of influence in national affairs. On

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9. For a general account of the events of December 1989, see ANDREI CODRESCU, *THE HOLE IN THE FLAG* (1991); NESTOR RATESH, *ROMANIA: THE ENTANGLED REVOLUTION* (1991); Matei Calinescu & Vladimir Tismăneanu, *Epilogue: The 1989 Revolution and the Collapse of Communism in Romania*, in VLAD GEORGESCU, *THE ROMANIANS: A HISTORY* (1991).

10. See Robert C. Toth, *Leaders' Sons Work to Mold New Romania*, L.A. TIMES, Dec. 31, 1989, at A1 (brief sketches of members of the NSF).

11. Iliescu was a former official in the Ceaușescu regime who fell from favor with the dictator in the early 1970's. *Id.*

12. Roman's father, Valter Roman, was an early leader of Romania's Communist Party. *Id.*

February 11, 1991, the product of their efforts, Law 15/1991, Settlement of Collective Labor Disputes, came into effect.

In order to provide a context in which Western readers can place Law 15/1991, Section I briefly explains the Romanian government's economic policy during the period from late December 1989 until early 1991. Section II sketches the development of the Romanian trade union movement during that period, and Section III chronicles the trade unions' major disputes with the government which led to the passage of Law 15/1991. Section IV describes and analyzes the statute itself, the initial instances of its use against striking Romanian unions and the response of the labor movement, which has been generally to resort to other methods of furthering its goals. Finally, the article provides an assessment for the future, namely, what was good for the NSF will probably be good for private enterprise.

#### **I. The Economic Policies of the National Salvation Front from December 1989 to April 1991**

It is useful to divide consideration of the NSF's economic policies into two periods. The first period, December 1989 through June 1990, immediately following the overthrow of Ceaușescu and preceding the installation of the first elected government, primarily emphasized temporary measures to bring basic material relief to the population after years of deprivation under Ceaușescu. The second period began in June 1990, after the May elections for the Presidency and Parliament. At this time, following a sweeping victory at the polls by the NSF, the government began to develop and implement a long-range reform program.

##### **A. Initial Efforts of the NSF Council and the Provisional Council of National Unity—December 1989 - June 1990**

On December 23, 1989, the day after Nicolae and Elena Ceaușescu fled Bucharest, the official newspaper, *Scînteia Poporului* ("The Spark of the People"), announced that the demonstrators who toppled Ceaușescu had "declared firmly for socialism, for the people's ownership and honest socialist principles untinted by the adventurist spirit and political demagogy of the Ceaușescu clan."<sup>13</sup> The newspaper article referred positively to Romanian Communist Party members, including activists like Ion Iliescu who lost their positions because they failed to carry out Ceaușescu's orders, and commented that the Romanian people would follow the path of "purified socialism."<sup>14</sup>

If the December 23 article accurately mirrored the views of the new leaders, the NSF's original objective was apparently a kind of socialist perestroika akin to Mikhail Gorbachev's reforms at that time in the Soviet Union. The NSF presented its program to the Romanian people

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13. United States Embassy (Bucharest), Daily Press Summary, *SCÎNTEIA POPORULUI*, Dec. 23, 1989, at 1, 2 (Dec. 23, 1989) (on file with author).

14. *Id.*

one day earlier, on December 22, 1989, its first day in power. The *Monitorul Oficial al României* (the *Official Romanian Gazette*, in which all official government acts are published) contained the program, which was unclear as to whether it envisioned a continuation of a reformed socialist structure or something fundamentally different:

The NSF program proposed the following:

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Restructuring the complete national economy based on criteria of profitability and efficiency. Eliminating administrative-bureaucratic methods of centralized economic leadership and promoting free initiative and competence in leadership of all economic sectors.<sup>15</sup>

In a January 4, 1990 speech on the state of the economy, given to the NSF Council and chairmen of the NSF County Councils, Prime Minister Petre Roman reported that, as a result of the policies of the old regime, "the Romanian economy was in a state of profound crisis"; that "the task of government [was] to try to get out of the crisis"; and, that "the . . . priority . . . was to start satisfying the immediate needs of the people and immediately raise people's living conditions."<sup>16</sup> Prime Minister Roman further informed his audience that there would be no "shock therapy," no immediate move to convert the state-owned economic structures through privatization and capitalization, and that he envisioned a more gradual approach.<sup>17</sup>

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15. *Comunicatul Către Țara al Consiliului Frontului Salvării Naționale*, MONITORUL OFICIAL AL ROMÂNIEI, Dec. 22, 1989, at 1.

16. *Petre Roman's Government Economic Report to NSF Working Meeting*, BBC Summary of World Broadcasts (Bucharest Home Service, Jan. 4, 1990) Jan. 9, 1990, available in LEXIS, Europe Library, Alleur File.

Specifically, Roman proposed to address: the lack of modern technology; the immediate need to import more energy; increasing consumer goods from domestic sources and imports; stopping Ceausescu's "lunatic investments" (Romania was filled with ill-advised construction projects dictated not by economic logic or need, but by Ceausescu's megalomaniac drive for enhanced industrial capacity); importing telecommunications equipment; ensuring healthy monetary circulation; repairing and restructuring enterprises that operated inefficiently; withdrawing the military from "slave labor" (the army had been routinely used to supplement the work-force during agricultural harvests and in the coal mines); and, respecting "the normal regime and duration of work in all fields of activity." *Id.* at 2-6.

17. As Roman put it at that time:

For the time being, we cannot proceed on the path of brutal decentralization. That would be to endanger the whole operation of our economy. We are, however, concerned with moving towards decentralization and towards giving autonomy to enterprises, but, at this moment, we are thinking of this fact and thoroughly studying this issue and as cautiously as possible."

*Id.* at 3.

The government was, however, prepared to permit new capitalist ventures. A decree-law of the NSF Council published on February 6, 1990, allowed the creation by Romanian citizens of small factories (maximum of 20 employees), professional for-profit associations (maximum of 10 members), and family businesses. *Decret-lege privind organizarea și desfășurarea unor activități economice pe baza liberei inițiative*, MONITORUL OFICIAL AL ROMÂNIEI, Feb. 6, 1990, at 3-6. See also United States Embassy (Bucharest), Daily Press Summary, ADEVĂRUL, Feb. 6, 1990, at 5; ROMÂNIA LIBERĂ, Feb. 6, 1990, at 3 (Feb. 6, 1990) (on file with author).

Of the various dysfunctional aspects of Romania's economy at this time, low productivity in particular troubled Petre Roman and NSF Chairman Iliescu. There were many reasons for this problem, including lack of energy and raw materials, and a breakdown in the centralized system of directing production. The NSF leaders quickly identified additional causes such as poor work habits and labor unrest in the workplace. During a January 7, 1990 radio speech, in which he sought to defend the creation of NSF enterprise councils,<sup>18</sup> Chairman Iliescu argued that in order to enhance production:

it is . . . vitally important to ensure normal working conditions in all enterprises and in all economic, social and agricultural units, to ensure an atmosphere of mobilisation of all forces in support of material production.

We make a heated appeal to all workers, to all technical and economic personnel in industry, transport and construction, trade and cooperatives and to all farmers to show a high patriotic awareness and human solidarity expressed concretely in work, in proper progress of production processes and the fulfillment of all contractual commitments, both on the internal market and in exports. Any activities liable to disturb and hinder the normal progress of production will be reflected first of all in a worsening of an already complex situation in the economy and will ultimately affect the lives of all of us. Among other things, salaries for January will only be ensured in relation to concrete results obtained at work . . . . [A]ll political and civic activities must be carried out outside working hours. Nothing must hinder productive activities. . . .

It is above all in the interest of the working collectives to have capable and honest leaders. This can, however, be accomplished without hindering the normal progress of production activities. Any demagogical calls to lessen exactingness, work and technological discipline and the observance of the working hours are harmful above all to the working collectives and must be rejected. . . .<sup>19</sup>

The government's concern with keeping workers on the job became a major factor in the policies underlying the development of collective labor dispute legislation. This sense of urgency grew in the following months, as production continued to fall and organized labor unrest increased.

In February 1990, the NSF reneged on its earlier pledges not to seek power in the first elections, which were set for May 20, 1990. The NSF registered itself as a political party on February 6 with Ion Iliescu as its president and with a party platform which emphasized a gradual transition to a "liberalized, decentralized and diversified system based on market mechanisms."<sup>20</sup>

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18. See *infra* note 45.

19. *Speech by Ion Iliescu Calls on People to be United*, BBC Summary of World Broadcasts (Bucharest Home Service, Jan. 7, 1990) Jan. 9, 1990, available in LEXIS, Europe Library, Alleur File.

20. United States Embassy (Bucharest), Daily Press Summary, ADEVĂRUL, Feb. 7, 1990, at 3; ROMÂNIA LIBERĂ, Feb. 7, 1990, at 5 (Feb. 7, 1990) (on file with author).

Once the NSF was an avowed partisan entity, it reconstituted the temporary governmental body in order to give it more legitimacy. The NSF Council was abandoned in favor of a Provisional Council of National Unity, which included representatives of other political parties. Iliescu and Roman, however, remained in their former positions. The Provisional Council established a governmental commission to study means of moving toward a market economy.<sup>21</sup> The commission's work continued as the NSF and the opposition parties began to concentrate on the coming elections. By the time of the elections in mid-May, the commission prepared the first draft of a transitional strategy.<sup>22</sup>

#### B. The National Salvation Front's Reform Program Following Its May 1990 Election Victory

The NSF won an overwhelming victory in the May 20, 1990 election. Iliescu was elected President with 85% of the popular vote and the NSF won 67% of the votes for parliament.<sup>23</sup> In his inaugural address on June 20, Iliescu appointed Petre Roman as prime minister once again, continuing the leadership team that had guided Romania since December 1989.<sup>24</sup>

Prime Minister Roman moved quickly to effectuate his plan for economic reform. On June 28 he presented his program for parliamentary approval. The program envisioned much more rapid changes in the economy than NSF campaigners had led the country to expect.<sup>25</sup> Roman's remedy for curing the damage the communist regime caused centered on proposals that ultimately would move most of the old state enterprises into the private sector, a "swift radical reform" intended to demolish the old "hypercentralisation" and replace it with a market economy.<sup>26</sup>

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The NSF platform's diversification plans envisioned state, cooperative, participatory, private and mixed ownership forms, with major plants continuing under state ownership, but operating under market mechanisms. The plans also committed the NSF to major social protection programs including minimum income policy, health care, labor training, housing and protection of youth, elderly and the unemployed, while declaring itself against "major differences in wealth between various social categories." *Id.*

21. United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Feb. 27, 1990, at 3 (Feb. 27, 1990) (on file with author).

22. *Iliescu and Roman Give Press Conference on Elections, Future Policy*, BBC Summary of World Broadcasts (Bucharest Home Service, May 23, 1990) May 26, 1990, available in LEXIS, Europe Library, Allour File.

23. *Final Election Results*, BBC Summary of World Broadcasts (Rompres in English, May 25, 1990) May 28, 1990, available in LEXIS, Europe Library, Allour File.

24. *Inaugural Address by President Iliescu*, BBC Summary of World Broadcasts (Bucharest Home Service, June 20, 1990) June 22, 1990, available in LEXIS, Europe Library, Allour File.

25. *Petre Roman Presents Government Programme and New Ministers*, BBC Summary of World Broadcasts (Bucharest Home Service, June 28, 1990) June 30, 1990, available in LEXIS, Europe Library, Allour File.

26. *Id.* at 18. The NSF's goal to purify socialism had disappeared from Roman's agenda by this time. As he put it in this speech:



Immediate restructuring of the nature of economic enterprises was essential to Roman's program. The restructuring encompassed a rapid move of state-owned businesses toward autonomy and thereby toward individual economic accountability for their performance. The individual business entity, not the government as a whole, would become responsible for generating profits and for handling the demands of its workers for better wages and benefits. This transformation would occur even though these organizations, for a time, would continue to be owned by the state, as opposed to private interests.

Privatization of state enterprises was thus to follow the creation of proper economic conditions. Instead, Roman placed priority on establishing the state's business entities on an independent economic footing, with the government becoming a shareholder and taxpayer of profits, ceasing to be the direct controller of the business.<sup>27</sup> The effort to transform the state-owned commercial societies so that their survival would depend on their economic merits was tempered by the recognition that many of the communist industrial white elephants would not survive. The elimination of these institutions constituted a daunting political prospect, given the tens of thousands of angry, unemployed workers these economic forces would generate.<sup>28</sup>

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The exclusive management of the economy by the state has proved to be a failure in all societies and in all corners of the globe. The argument of the socialist-collectivist economy, according to which the society's interests and progress can be rigorously planned, thus leading to a so-called wonderful internal balance, does not resist the scrutiny of a thorough scientific and economic investigation. Such an analysis emphasises—unfortunately after a much too long disastrous experience—that the main economic driving force, consisting of economic agents and operators, is losing its identity. They are included in calculations based on wishful and self-willed thinking, which ignore reality and are totally subjective. Any theoretical discussion of the degree of the state's intervention in the economy must clearly distinguish between the promotion of collective interests through state policies and the interference of the state in the economic mechanism.

*Id.* at 17.

27. *Id.* at 19-20. Parliament subsequently passed two statutes to accomplish this restructuring, Law 15/1990, State Owned Enterprise Restructuring, promulgated August 8, 1990, and Law 31/1990, Company Law, promulgated November 17, 1990. Parliament did not enact the statutory framework necessary to privatize government-owned businesses until late in 1991, with the passage of Law 58/1991, Privatization of Commercial Companies, promulgated August 16, 1991. The *Law Digest for Foreign Investors* contains a compilation of English translations of these statutes (Romanian Development Agency, Bucharest, Feb. 1992).

28. Roman recognized from the beginning that the government would eventually have to deal with this problem:

The situation is also very difficult because our economy, as we inherited it from the madman, cannot sustain an immediate increase in living standards. You see, hundreds and thousands of enterprises were created without thinking how, on what basis, with what resources, and with what skills they should operate. However, thousands, scores of thousands of people are working there. These people have to earn their living, a decent one.

*Petre Roman Addresses Bucharest Rally*, BBC Summary of World Broadcasts (Bucharest Home Service, Jan. 29, 1990) Jan. 31, 1990, available in LEXIS, Europe Library, Alleur File.

The Prime Minister emphasized the need for a new way of thinking and for a new generation of decisionmakers. He criticized enterprise managements which had resisted reform since December 1989. Certain managers, according to Roman, had tried to diffuse worker unrest by reducing production while increasing salaries, which actually resulted in increased costs with continuously decreasing production.<sup>29</sup> Given this state of affairs, Roman viewed two conditions as essential to achieving a successful transition to enterprise autonomy: "powerful management, which is competent and able to assume responsibilities in administering enterprises";<sup>30</sup> and "a six-month moratorium on the trade unions' pay and working conditions claims, in exchange for the government's pledge to compensate for such reform elements that hurt incomes and working conditions."<sup>31</sup> As will be seen,<sup>32</sup> the trade unions' unwillingness to cooperate in securing these conditions helped set the stage for the government's restrictive strike statute.

In addition to enterprise autonomy, Roman's plan included liberalization of prices and creation of the fiscal infrastructure necessary for independent business activity to flourish: commercial banks, a stock exchange, convertible currency, and some form of bankruptcy.<sup>33</sup> Of these elements, the trade unions would immediately attack the liberalization policy, which by eliminating government subsidies would increase prices from their artificially low levels to ones reflecting more accurately the true value of products and services.<sup>34</sup>

By the Fall of 1990, the government was pushing ahead with its reform plan in an atmosphere clouded by labor unrest and a dramatic drop in productivity. Industrial production had declined 28% since January 1990 while labor productivity had fallen by 23%.<sup>35</sup>

The first phase of price liberalization took place on November 1, 1990, when the government ended subsidies on the prices of most items

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Roman returned to this concern in his state of the union report delivered to Parliament on Feb. 26, 1991, after the first stage of the reforms had been completed,

Adjustment and eventually restructuring of the national economy, in contrast with the legal and institutional reform, is the most delicate part of the transition process in our society, since it sums up unpopular aspects of this process [—] the close-down or partial closure of production units, unemployment, price rises, a widespread sense of insecurity and discomfort.

*Final Installments of Petre Roman's State of the Nation Report*, BBC Summary of World Broadcasts (Rompres in English, Mar. 8, 1991) Mar. 27, 1991, at 25, available in LEXIS, Europe Library, Alleur File.

29. *Petre Roman Presents Government Programme and New Ministers*, *supra* note 25, at 14.

30. *Id.* at 22.

31. *Id.* at 19.

32. See discussion *infra* Section III.

33. *Petre Roman Presents Government Programme and New Ministers*, *supra* note 25, at 20-24.

34. See *infra* notes 100-02 and accompanying text.

35. Ariane Genillard, *Romania Fighting to Right Economy*, WASH. TIMES, Oct. 23, 1990, at A7.

except food, power, heating, fuel and rent.<sup>36</sup> Plans to implement the second round of price liberalization on January 1, 1991, removing subsidies on basic foods, medicines and children's goods, had to be postponed, however, following fears of widespread public unrest.<sup>37</sup>

The basic thrust of the government's reform program as of early 1991, when it passed Law 15/1991, involved immediate steps to put the economy on a market-based footing, but leaving state enterprises in government ownership for an indefinite period. Throughout 1990, the trade unions played an increasingly active role in trying to influence government decisions regarding everything from basic policy initiatives to local enterprise management. It is therefore to the development of the trade unions and to their activities during this period that our attention must now turn.

## II. The Romanian Trade Union Movement—Origins and Early Development<sup>38</sup>

The only trade unions which existed before December 1989 were part of the official structure of the communist system, the General Trade Union Federation of Romania, or as it was known in Romania, the "UGSR" (Uniunea Generală a Sindicatelor din România). There were very few reported efforts to form independent unions during the Ceaușescu era. Authorities quickly suppressed a collaboration between intellectuals and workers in 1979.<sup>39</sup> By early 1989, however, attempts to organize had apparently begun again,<sup>40</sup> but there was never any true union movement in communist Romania comparable to Poland's Solidarity, or to

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36. Peter Humphrey, *Parliament Extends Romanian Government Power Over Economy*, The Reuter Library Report, Nov. 12, 1990, available in LEXIS, Europe Library, Allour File. See also *Prices Liberalisation Premier Roman Gives News Conference[sic]*, BBC Summary of World Broadcasts (Rompres in English, Nov. 1, 1990) Nov. 5, 1990, available in LEXIS, Europe Library, Allour File. Prime Minister Roman insisted that government subsidies to the population would insure that price liberalization would not affect the country's living standards. *Id.*

37. Peter Humphrey, *Romanian Government Retreats on Food Price Rises*, Reuters, Dec. 8, 1990, available in LEXIS, Europe Library, Allour File; see also *Impact of Price Reform in Romania*, FINANCIAL TIMES, East European Markets, Jan. 11, 1991, available in LEXIS, Europe Library, Allour File.

38. See generally Dan Ionescu, *Romania: Trade Unions a Growing Force*, Report on Eastern Europe (Radio Free Europe, Mar. 29, 1991).

39. See *Rumania: A Whiff of Trouble to Come*, ECONOMIST, Oct. 24, 1981, at 37; see also, Bradley Graham, *The Voices That Refuse to be Silenced: Despite Official Harassment, Voices of Protest Continue to be Heard*, WASH. POST, June 18, 1985, at A1.

According to a noted Romanian historian, this effort resulted in the formation of the Free Union of the Working People of Romania, with locals in several regions of the country and over 2,000 members. The collaboration lasted no more than two weeks, however, and its leaders were all imprisoned. GEORGESCU, *supra* note 9, at 264.

40. See *Hungarian TV Interview with Romanian Historian*, BBC Summary of World Broadcasts (MTI in English, May 8, 1989) May 12, 1989, available in LEXIS, Europe Library, Allour File. A Washington Post story in early January 1990 reported the existence of a shadowy labor union underground which had existed since the mid-1970's and which, long before the December 1989 uprising, had planned nationwide

the Bulgarian trade union confederation, Podkrepa.<sup>41</sup>

The absence of a true union movement did not mean, however, that there was no worker opposition to the regime. In 1977, and again in 1987, huge anti-government protests were mounted in state industries. The 35,000 coal miners of the Jiu Valley struck in 1977, angry about a new pension law which reduced their benefits, as well as poor food supplies and overtime requirements.<sup>42</sup> The government initially capitulated to their demands, but quickly reneged on its agreements; the strike leaders subsequently disappeared.<sup>43</sup>

Ten years later, in November 1987, the workers at the Red Flag tractor and truck factory in Braşov, Romania's second largest city and a major industrial center, rose in a spontaneous protest against pay cuts. More than 20,000 people stormed through the city streets, seized City Hall and the Communist Party headquarters and burned some of their contents before riot police and militia regained control.<sup>44</sup>

Although there were no independent trade unions when the people took to the streets in December 1989, unions began to appear almost immediately in the aftermath of Ceauşescu's fall. Unfortunately, those which were most quickly created, with the blessings of the NSF,<sup>45</sup> were groups established and dominated by activists from the old UGSR. On

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demonstrations of some sort for March 1990. Jonathan Randal, *Romanian Says Patriotic Song Signaled Revolt*, WASH. POST, Jan., 9, 1990, at A1.

41. See *Bulgaria Communists Call Unions' Plan "Blackmail"*, L.A. TIMES, Dec. 25, 1989, at A13.

42. See Colin McIntyre, *Strikes*, REUTERS, Aug. 17, 1980, available in LEXIS, Europe Library, Alleur File.

43. *Id.* See also *Rumania: A Whiff of Trouble to Come*, supra note 39. Miron Cosma, the current leader of the Jiu Valley Miners who claims to have been a participant in the strike, confirmed to the author the reported events in 1977, including the "disappearance" of the strike leaders. Interview with Miron Cosma, President of the League of Jiu Valley Miners, (Feb. 10, 1992). Since 1989, the Jiu Valley miners have continued their tradition of violent confrontations, both on behalf of and against the government. See *infra* notes 80-81; text accompanying notes 226-28.

44. See Colin McIntyre, *Romanian Unrest Seen as Biggest Challenge to Regime Since 1977*, Reuter Library Report, Nov. 25, 1987, available in LEXIS, Europe Library, Alleur File; *Workers Riot Over Shortages*, Facts on File World News Digest, Nov. 27, 1987, available in LEXIS, Europe Library, Alleur File; Loren Jenkins, *Ceausescu Survives Another Winter of Discontent: Romanian Leader Affirms Rigid Grip on Country Despite Protests, Lack of Heat, Food*, WASH. POST, Dec. 20, 1987, at A34.

One of Romania's contemporary labor organizations, the "15 November" Trade Union Confederation, named in memory of this uprising, is led by Mircea Sevaciu, who was a leader of the workers in the 1987 protests; he was banished and imprisoned for his role and later emerged as a leader of anti-government forces in Braşov in December 1989. Report of the ICFTU Coordinating Committee on Central and Eastern Europe, Appendix I, at 6 (June 11, 1991) (on file with author).

45. At first, the NSF attempted to put its own representatives directly into the workplace. In addition to creating NSF councils at the national, county and local levels, these representatives also established NSF "enterprise councils." Chairman Iliescu saw the council as a non-adversarial link between the enterprise's managers and the central government:

[T]he Front's councils in the enterprises . . . must not interfere with the current activities of the technical-administrative management of the enterprises.

December 27, just five days after the communist government collapsed, the Romanian Press Agency (soon to be known as Rompres) announced the creation of "the Provisional Committee which will replace the Gen-

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The latter bears full material and financial responsibility for the activities of the enterprises, and it must be helped to fulfil its obligations. There can be situations in which the working collectives are dissatisfied with the quality, competence and moral authority of certain leaders. In these circumstances, the councils of the NSF as representatives [sic] bodies can appeal to the higher authorities so that together they can ensure their replacement by suitable people . . . . The NSF Councils within the enterprises, as organs which represent the working people, can and must take an active interest in ensuring good work and production progress and in this way exercise public control . . . over the way the leading cadres and the technical-administrative machinery are fulfilling their duty.

However, this must not be done with arbitrary methods or by issuing orders nor through substitution, but in a constructive fashion, thus facilitating the solution of problems through consensus and active co-operation.

*Speech by Ion Iliescu Calls on People to be United*, BBC Summary of World Broadcasts (Bucharest Home Service, Jan. 7, 1990) Jan. 9, 1990, available in LEXIS, Europe Library, Alleur File. See also *NSF and Government Affairs; Guide issued on Status of NSF Councils*, BBC Summary of World Broadcasts (Rompres in English, Jan. 12, 1990) Jan. 16, 1990, available in LEXIS, Europe Library, Alleur File (asserting, *inter alia*, that the enterprise councils were not to have "political ambitions of management and control over the technical-administrative management" and that free trade unions would eventually take over the functions of the enterprise councils).

Opposition parties immediately attacked the enterprise councils as NSF's effort to retain control over the enterprises. Cf. *Interview with NSF Leaders*, BBC Summary of World Broadcasts (Bucharest Home Service, Jan. 13, 1990) Jan. 17, 1990, available in LEXIS, Europe Library, Alleur File (Iliescu defends against attacks by the National Democratic Party by arguing that the enterprise councils were actually a creation of low-level activists and that both the councils and the NSF would eventually disappear).

More importantly, the workers themselves rejected the councils in favor of establishing actual trade unions. Teodor Stetcu, Vice-President of Frăția in 1991-92, told the author that he began his trade union career shortly after the December 1989 overthrow of the government; his fellow workers chose him to lead the independent union they created at the Policolor factory; virtually his first official act was to expel the NSF enterprise council from the factory. In this fashion, the workers across Romania spontaneously rejected this NSF initiative. See, e.g., Celestine Bohlen, *Upheaval in the East; Democracy Dazes Some Romanians*, N.Y. TIMES, Feb. 5, 1990, at A9 (workers at the 23 August factory, later renamed Faur, a 20,000 employee enterprise in Bucharest, reorganized the NSF council into a trade union); Mary Battiatu, *Political Parties Perplex Romanians; Salvation Front Benefits from Worker Fear of 'Foreign Masters'*, WASH. POST, Feb. 4, 1990, at A32 (the 14,000 employees of the Enterprise of Ready-made Clothes and Knitting, the largest clothing plant in Eastern Europe, formed their own trade union and forced out the most unpopular communist managers); United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Feb. 6, 1990, at 1; Feb. 9, at 2 (Feb. 6 and Feb. 9, 1990) (on file with author) (various reports from mines and factories across Romania of dissolutions of NSF enterprise councils coupled with creation of free trade unions in their places).

Recognizing the failure of the enterprise councils, the NSF ordered them to discontinue their activities in early February 1990, at the same time the NSF acknowledged its intention to convert itself into a political party and compete in the May 1990 elections. *NSF Holds Final Meeting Before Re-formation*, BBC Summary of World Broadcasts (Bucharest Home Service, Feb. 3, 1990) Feb. 6, 1990, available in LEXIS, Europe Library, Alleur File.

eral Trade Union Confederation in Romania [UGSR]."<sup>46</sup> The leaders of this Provisional Committee, which evolved within a few months into the Confederația Națională a Sindicatelor Libere din România, Confederation of Free Trade Unions of Romania (CNSLR), treated the vast assets of the UGSR as something entirely within their control. They offered the NSF Council the use of the UGSR's vacation facilities for victims of the Ceaușescu regime, as well as fifty million lei from the UGSR's coffers to be used to help the families of victims of the recent fighting.<sup>47</sup> The leaders expressed their support for the NSF's program, called for free elections to restructure the trade unions and announced that a national conference of "the Union of Free Trade Union Federations in Romania" would be held before the parliamentary elections in the Spring of 1990, "so that it may nominate its own candidates to those elections."<sup>48</sup>

Less than a month later, on January 25, 1990, the first national trade union organization untainted by connections with the communist past appeared. The Independent Trade Union Confederation "Frăția" (Brotherhood) was created by representatives of the Drivers' Union and the unions at three factories: IMGB Heavy Equipment Factory and Policolor, both in Bucharest, and the "First of May" factory, in Ploiești.<sup>49</sup>

Frăția's founders were motivated from the beginning by a desire to resist what they saw as the continuation of the UGSR in the form of the Provisional Committee and the national structure it was establishing, the future CNSLR.<sup>50</sup> Throughout much of 1990, one of Frăția's major

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46. *Programme for Free Trade Union*, BBC Summary of World Broadcasts (Romanian Press Agency in English, Dec. 27, 1989) Dec. 29, 1989, available in LEXIS, Europe Library, Alleur File.

47. *Id.* The Provisional Committee later denied that it had offered money to the Front, publishing a letter from the Romanian National Bank purporting to prove that no cash had been paid from the Committee's accounts (presumably the UGSR funds) to any "political formations." *Trade Union Denials of Funds for NSF*, BBC Summary of World Broadcasts (Bucharest Home Service, Feb. 24, 1990) Mar. 1, 1990, available in LEXIS, Europe Library, Alleur File.

48. *Programme for Free Trade Union*, *supra* note 46; see also United States Embassy (Bucharest), Daily Press Summary, ADEVĂRUL, Dec. 29, 1989, at 3; ROMÂNIA LIBERĂ, Dec. 29, 1989, at 3; TINERETUL LIBER, Dec. 29, 1989, at 2 (Dec. 29, 1989) (on file with author). For an amusing, yet disturbing, view of one factory's effort to implement the elections for new unions called for by the Provisional Committee (and the Front), see Jonathan Randal, *A Romanian Lesson in Democracy: With Humor and Anger, Factory Workers Elect Representatives*, WASH. POST, Jan. 13, 1990, at A17 (proceedings dominated by local communist party propaganda chief).

49. *Frăția—Together Will Be Stronger*, Frăția News, No. 1/92 (undated) (informative bulletin published in English by Frăția; on file with the author).

50. Miron Mitrea, *Report Presented to the First Congress by the Co-ordinator [sic] of the Independent Trade-Unions [sic] Confederation "Frăția"*, (undated; the Congress was held Sept. 23-28, 1991) (on file with the author).

Members of Frăția were very visible in their attacks on the CNSLR within the first weeks of Frăția's creation. Its accusations that CNSLR was simply a new version of the old communist trade unions appeared in the Bucharest press in late February, 1990. United States Embassy (Bucharest), Daily Press Summary, LIBERTATEA, Feb. 27, 1990, at 3 (Feb. 28, 1990) (on file with author). Frăția representatives sent as

objectives, along with most of the other independent trade unions not affiliated with CNSLR was to end the control CNSLR exercised over the money and facilities it inherited from the UGSR.<sup>51</sup>

As of late 1991, it was estimated that Frăția had more than 850,000 members in 19 professional federations and 30 territorial branches.<sup>52</sup> In September 1991, the International Confederation of Free Trade Unions accepted Frăția as its first Romanian member.<sup>53</sup>

In June 1990, CNSLR held a national congress at which it adopted its constitution and elected new leadership. Its president, Victor Ciorbea, maintains that the congress marked the end of the CNSLR as a body dominated by former activists in the communist UGSR.<sup>54</sup> In 1992 CNSLR claimed a total of 2.5 million members in 19 occupational federations and 41 territorial unions.<sup>55</sup>

On June 7, 1990, Romania saw the birth of the Alfa Cartel, the third of the large labor confederations which appeared in 1990. Seven union federations, representing workers in metal fabrication, steel, electronics,

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observers to the provisional branch government in Bucharest protested the participation of CNSLR members in that body. *Id.* at 2. A leader of the First of May factory complained that the old trade unionists were hampering the activities of the Frăția affiliate there and that the government had blocked access to the funds of the former trade unions. *Id.* at 3.

51. *See, e.g.*, United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, June 8, 1990, at 1 (June 8, 1990) (on file with author) (Frăția, together with the Inter-Union Alliance, issues a communique requesting, *inter alia*, support in recovering the assets of the UGSR).

52. *Report Presented to the First Congress by the Co-ordinator of the Independent Trade Unions Confederation "Frăția"* [sic] (undated pamphlet, prepared for the September 23-28, 1991, Frăția Congress; on file with the author).

53. Interview with Mr. Miron Mitrea, President of the ITUC "Frăția," Frăția News, No. 1/92, *supra* note 50.

54. Interview with Victor Ciorbea, President of the National Free Trade Union Confederation of Romania (CNSLR), in Bucharest, Romania, (Apr. 16, 1992). Article 29 of CNSLR's constitution specifies,

Unemployed people and people who abused their authority in political, juridical and administrative offices, who violated the basic human rights, as well as people who organized or were instruments of repression in the security bodies, the old police and militia, cannot be elected to the leading bodies of the Confederation.

Moreover, the former activists in the Romanian Communist Party, (P.C.R.), Union of Communist Youth (U.T.C.) and the General Union of the Romanian Trade-Unions (U.G.S.R.), as well as the people with top positions in the administrative bodies of the old regime, are not eligible for the leading bodies of the Confederation.

Art. 29, THE STATUTE OF THE NATIONAL FREE TRADE UNION CONFEDERATION OF ROMANIA (CNSLR), adopted June 29, 1990 (on file with the author).

Mr. Ciorbea maintained that after the June 1990 Congress, CNSLR dismissed or pensioned off the former communist activists who had been active in CNSLR's early days. Accordingly, even ordinary employees such as secretaries were replaced if they fell in this category. This practice continued in the federations and territorial unions which made up CNSLR's membership. Interview with Victor Ciorbea, *supra*.

55. *Introducing the CNSLR*, (undated pamphlet produced by the CNSLR, on file with author).

coal mining, petrochemicals, paper and the military,<sup>56</sup> joined together to create Alfa.<sup>57</sup> By the following spring Alfa claimed 1.3 million members, although it seemed to be experiencing frequent additions and departures among its affiliated organizations.<sup>58</sup>

In addition to CNSLR, Frăția, and the Alfa Cartel, the Romanian labor movement has seen a dizzying array of confederations, federations, and local unions arise, join in alliances and disaffiliate.<sup>59</sup> As one experienced observer succinctly put it in mid-1991, "Romanian trade unions split more often than amoebas, most often due to the whim of leadership."<sup>60</sup> There is no logical division of unions based upon profession, trade or industry among the various confederations and federations. Workers in the same industries, and sometimes in the same factories, may be represented by several different unions, each of which is affiliated with a different federation. In theory, a federation is composed of local trade unions in the same industry. A confederation is formed from two or more federations. While there is no agreement on the accuracy of anyone else's membership claims, it was generally accepted by early 1992 that CNSLR, Frăția and Alfa Cartel together accounted for approximately 85% of the trade union membership in Romania.<sup>61</sup>

### III. Labor Disputes in Romania Preceding the Passage of Law 15/1991: December 1989 - February 1991

#### A. Events Prior to Swearing in the First Elected Government (June 1990)

In the six months between the overthrow of Ceaușescu in December 1989 and the inauguration of the first elected government in June 1990,

56. *Report of the ICFTU Coordinating Committee on Central and Eastern Europe*, Appendix I (Report on the Different Trade Union Groupings in Romania as of 15 May 1991) June 1991, at 3 (on file with the author).

57. United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, June 8, 1990, at 3 (June 8, 1990) (on file with author).

58. *Report of the ICFTU Coordinating Committee on Central and Eastern Europe*, *supra* note 56, at 2-3 (Appendix I).

59. Some of the more active organizations in 1991 included Hercules (a confederation of transport worker federations), CONSENERG (a federation of electric energy workers), Alianța Intersindicală (a Brașov-based organization, which declined in importance after the September 1990 city-wide strike in Brașov), *see infra* text accompanying notes 88-92, and "15 November," also a Brașov centered organization, which takes its name from the November 1987 uprising, discussed *supra* note 44 and accompanying text.

60. *Report of the ICFTU Coordinating Committee on Central and Eastern Europe*, *supra* note 56, at 4 (Appendix I).

61. During interviews the author conducted in the winter of 1992, this figure was not disputed by leaders of COSIN (the Confederația Sindicatilor Independente Neafiliați), a relatively small labor organization, or by representatives of BNS (Blocul Național Sindical—The National Union Bloc), the fourth largest confederation to emerge in Romania, created in June 1991 by the merger of trade union federations in power production (CONSENERG), printing, post and telecommunications, machine building and electronics.



labor strife reflected the ad hoc nature of events in Romania. The strikes, protests and rallies were almost entirely local in nature and were typically concerned with improving conditions specific to the site of the activity.<sup>62</sup> A high percentage of worker demands in this time period dealt with removal of the old, communist-era managers.<sup>63</sup> The government's response frequently was to send high-level representatives, including President Iliescu and Prime Minister Roman, to negotiate with, and frequently to capitulate to, the workers.<sup>64</sup>

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62. One of the earliest reported strikes was that of public transportation workers. They walked off the job on January 10, 1990, claiming they were being beaten by passengers dissatisfied with the operation of the trams. The workers insisted that it was not their fault that the depots were poorly equipped and the transportation system outdated. United States Embassy (Bucharest), Daily Press Summary, ADEVĂRUL, Jan. 11, 1990 (Jan. 11, 1990) (on file with author).

63. For example, in early January 1990, workers in plants in Brăila protested against former Ceaușescu officials appointing themselves to the local NSF council. United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Jan. 6, 1990, at 2 (Jan. 8, 1990) (on file with author). These protests were apparently followed by local action. Within a month it was reported that a free trade union had been created at the heavy equipment plant in Brăila and that the local NSF council had been dissolved. United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Feb. 2, 1990, at 5 (Feb. 2, 1990) (on file with author).

Further examples of worker efforts to remove managers during this period include the following: a strike by employees of the Pipera wood processing factory in Bucharest on January 18, 1990 led the local NSF council to fire undesirable officials and investigate their past activities, United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Jan. 19, 1990, at 5 (Jan. 19, 1990) (on file with author); a four hour warning strike in March 1990 by the union representing employees at the Ministry of Petroleum sought the dismissal of a ministerial counselor (who was the former head of the NSF council organizational commission) for "lack of appropriate competence and experience," United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Mar. 8, 1990, at 1 (Mar. 8, 1990) (on file with author); the teachers' union affiliated with Frăția struck on April 2, requesting, *inter alia*, changes in inspectorate personnel, United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Apr. 3, 1990, at 2 (Apr. 3, 1990) (on file with author); on May 7, 200 pharmacists demonstrated in Bucharest against the promotion of former communist party activists to positions as Ministry of Health inspectors, as well as the granting of scholarships to France for former directors dismissed for incompetence and abuse, United States Embassy (Bucharest), Daily Press Summary, TINERETUL LIBER, May 8, 1990, at 2 (May 8, 1990) (on file with author).

64. In the first two months alone the following meetings were widely reported: on January 16, 1990, Prime Minister Roman received a delegation of miners from Maramureș seeking shorter underground working hours, better pay and pensions, and better living and health care conditions (Roman found their complaints justified and consulted with the Minister of Mines on ways to grant them relief), United States Embassy (Bucharest), Daily Press Summary, ADEVĂRUL, Jan. 17, 1990, at 3; ROMÂNIA LIBERĂ, Jan. 17, 1990, at 5 (Jan. 17, 1990) (on file with author). NSF Chairman Iliescu and Roman met with the Jiu Valley coal miners on January 20, 1990, to discuss the latter's grievances, United States Embassy (Bucharest), Daily Press Summary, ADEVĂRUL, Jan. 20, 1990, at 4 (Jan. 22, 1990) (on file with author). Roman met with railway workers on January 28, 1990, to discuss their professional problems, *Reports on Government and Parties; Petre Roman Meets Railway Workers*, BBC Summary of World Broadcasts (Rompres in English, Jan. 29, 1990) Jan. 31, 1990, available in LEXIS, Europe Library, Alleur File. Iliescu met with miners from across Romania on January 30, 1990, United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Jan. 31, 1990, at 5 (Jan. 31, 1990) (on file with author). Iliescu met

There were several particularly serious labor disputes which resulted in strikes during this initial phase of the NSF government. In February 1990, the coal miners from Cavnic, in Maramureş, went on strike to force the Prime Minister to receive their representatives, who sought the resignation of the Minister of Mines and expressed dissatisfaction with the results of an earlier meeting with Roman.<sup>65</sup> After the miners in Baia Mare walked out on February 12, in solidarity with their Maramureş counterparts, Roman traveled to Cavnic, met with the miners for three hours and granted all of their requests, including the assignment of a representative of the Prosecutor General's office to investigate charges against the Minister of Mines.<sup>66</sup>

The same day that Prime Minister Roman reached an agreement with the Maramureş miners, the crews of Romanian commercial vessels in the harbors of Constanţa, Galaţi, Brăila, Tulcea and Sulina struck, protesting the Minister of Transportation's refusal to grant their requests for better pay and working conditions.<sup>67</sup> This was followed by another coal miners' strike, in the Jiu Valley, by a walk-out by the air traffic controllers at Bucharest's Otopeni International Airport, and by a strike of the Metro drivers in the Bucharest subway, paralyzing the capital's most efficient transportation system.<sup>68</sup> Finally, a Romanian seamen's strike in the port of Galaţi on May 23, 1990, over demands for pay increases and night shift bonuses,<sup>69</sup> threatened supplies of materials to the gigantic steel mill in Galaţi and caused the government to authorize the use of military tugboats to deliver the materials.<sup>70</sup> The seamen returned to work on May 31, after talks with government officials

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the workers of the First of May plant in Ploieşti on February 27, 1990, to discuss their requests for a five-day work week, the dissolution of the old trade union, and a list of Securitate informers in the plant. Iliescu was noncommittal, which angered the workers. Scuffles ensued and the union, a Frăţia affiliate, held a warning strike. United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Mar. 2, 1990 (Mar. 2, 1990) (on file with author).

This response understandably led the workers and the unions to believe that they could routinely expect such high-level government intervention to address their problems in the workplace. While Roman, Iliescu and other government officials continued this practice during the crises, it became clear that by the summer of 1990 Roman, at least, no longer willingly did business in this direct fashion. *See infra* note 92 and accompanying text.

65. United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Feb. 9, 1990, at 5 (Feb. 9, 1990) (on file with author). *See supra* note 64 for a reference to the January 16 meeting with Roman.

66. United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Feb. 13, 1990, at 3 (Feb. 13, 1990) (on file with author).

67. *Id.* at 1.

68. Adrian Dascalu, *Strikes Pose Challenge for Romania's Interim Rulers*, The Reuter Library Report, Apr. 21, 1990, available in LEXIS, Europe Library, AllEUR File.

69. *Call for Commission of Inquiry to Look into Sailors' Strike*, BBC Summary of World Broadcasts (Rompres in English, May 29, 1990) June 1, 1990, available in LEXIS, Europe Library, AllEUR File.

70. *Government Acts to Overcome Impact of Sailors' Strike*, BBC Summary of World Broadcasts (Rompres in English, May 30, 1990) June 1, 1990, available in LEXIS, Europe Library, AllEUR File.

resulted in the granting of most of their demands.<sup>71</sup>

Labor agitation of an entirely different order appeared during this pre-election period as well; trade unions began joining mass protest movements with other groups opposed to the NSF. On March 11, 1990, writers, journalists, intellectuals and students sponsored rallies in Bucharest, Timișoara and Iași. The demonstrators disseminated a document called the "Timișoara Proclamation," which, among other things, called for free enterprise and the banning of all former communist party officials, which would have included Iliescu and many other NSF leaders, from running for political office in the upcoming elections.<sup>72</sup>

While labor leaders were participants in the Timișoara<sup>73</sup> and Iași demonstrations,<sup>74</sup> the organizers of a Bucharest-based union demonstration, held that same day in support of claims for a five-day work week, enterprise autonomy, distribution of UGSR assets and release of Securitate records, refused to join the Bucharest "Timișoara" rally.<sup>75</sup> Labor reluctance to join political protests quickly disappeared, however. As support for the principles and proponents of the Timișoara Proclamation grew in the coming weeks, major elements of the union movement also embraced it. On April 1, 1990, the Frăția confederation sponsored rallies in several cities, including Bucharest, in support of the proclamation and its call to rid the government of former communist party and communist trade union activists.<sup>76</sup>

Responding to media criticism of its actions, Frăția issued a statement disavowing support for any specific political organization but declaring both its endorsement of the Timișoara Proclamation and its

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71. *Sailors End Strike*, BBC Summary of World Broadcasts (Rompres in English, May 31, 1990) June 6, 1990, available in LEXIS, Europe Library, Alleur File.

Other strikes in the period ending in late June included: a 24-hour strike at the Bucharest Electricity Distribution Plant, United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Apr. 24, 1990 (Apr. 24, 1990) (on file with author); cf. Andrej Gustincic, *Romanian Demonstrators in Tense Confrontation with Police*, The Reuter Library Report, Apr. 23, 1990, available in LEXIS, Europe Library, Alleur File; a union strike at the Oil Ministry on May 7, United States Embassy (Bucharest), Daily Press Summary, TINERETUL LIBER, May 8, 1990, at 2 (May 8, 1990) (on file with author); Bucharest pharmacists' warning strike on May 13 and 14, United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, May 14, 1990, at 1 (May 14, 1990) (on file with author); public transportation workers' strike in Iași, a city in Moldavia, *In Brief: Poor Economic Performance and Strikes*, BBC Summary of World Broadcasts, May 10, 1990, available in LEXIS, Europe Library, Alleur File.

72. See generally *Mass Rally Devoted to Timisoara Proclamation*, BBC Summary of World Broadcasts (Bucharest Home Service, Mar. 11, 1990) Mar. 13, 1990, available in LEXIS, Europe Library, Alleur File; *Peaceful Demonstrations Held in Bucharest*, BBC Summary of World Broadcasts (Rompres in English, Mar. 11, 1990) Mar. 13, 1990, available in LEXIS, Europe Library, Alleur File; United States Embassy (Bucharest), Daily Press Summary, ADEVĂRUL, Mar. 13, 1990, at 1; ROMÂNIA LIBERĂ, Mar. 13, 1990, at 1, 3 (Mar. 13, 1990) (on file with author).

73. *Mass Rally Devoted to Timisoara Proclamation*, *supra* note 72.

74. United States Embassy (Bucharest), Daily Press Summary, *supra* note 72.

75. *Peaceful Demonstrations Held in Bucharest*, *supra* note 72.

76. United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Apr. 3, 1990, at 1, 2 (Apr. 3, 1990) (on file with author).

intention to pressure the political parties in furtherance of its economic and social goals.<sup>77</sup> In an interview, Frăția's leader, Miron Mitrea, dismissed the political parties as too weak to run the country, stressed the need for strong trade unions and called for the elimination of communist activists from government and the enterprises. Furthermore, he complained about the continuing control of UGSR assets by the Provisional Committee (CNSLR) and expressed his support for privatization, although he said it should be achieved gradually.<sup>78</sup>

Highly visible segments of the independent trade union movement thus became identified as aligned with the burgeoning anti-NSF movement which swept the major Romanian cities in the weeks immediately before and after the May 20, 1990 national elections. On May 8, anti-NSF demonstrators held a news conference to voice their many political demands to the government. The demonstrators consisted largely of university students who established and occupied a tent city in University Square in Bucharest for seven weeks. In mid-June, the government and its allies, the Jiu Valley miners, finally drove them from University Square. The demonstrators' demands included the creation of trade union laws in accordance with international conventions, the dissolution of the old UGSR structure (*i.e.*, the Provisional Committee, soon to become CNSLR, and its local organizations) and the distribution of the UGSR assets to the new trade unions.<sup>79</sup>

Between June 13 and 15, 1990, President-elect Iliescu, referring chiefly to the students and others who were in the tent city at University Square, declared the government under attack from fascist troublemakers intent on its violent overthrow and called upon the workers of Romania to come to Bucharest to defend it. As a result, thousands of coal miners from the League of Jiu Valley Miners, along with workers from some Bucharest factories, roamed the streets of the capital for two days, attacking students, intellectuals, opposition party leaders, newspaper offices and any suspicious-looking person.<sup>80</sup> These events illustrate not only the level of political instability present in Romania at that time, but also the central role organized labor played in the political struggle; on the one hand the rogue Jiu Valley miners<sup>81</sup> and on the other hand

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77. United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Apr. 4, 1990, at 1, 2 (Apr. 4, 1990) (on file with author).

78. *Id.*

79. *University Square Demonstrators Hold News Conference*, BBC Summary of World Broadcasts (Bucharest Home Service, May 8, 1990) May 10, 1990, available in LEXIS, Europe Library, Alleur File.

80. The miners' rampage brought world-wide attention and condemnation to Romania. For a representative sampling of the coverage of these incidents in the United States media, see, e.g., Celestine Bohlen, *A Backlash in Romania: In Calling Out Miners to Stifle Opposition, President Forfeits Control and Good Will*, N.Y. TIMES, June 18, 1990, at A1; R.C. Longworth, *Trampling of New Democracy Confuses, Dispirits Romanians*, CHI. TRIB., June 17, 1990, at C5.

81. This was the third time the miners had descended on Bucharest prepared to attack opponents of the NSF. The other times were on January 29 and again on February 19, in response to opposition groups' political demonstrations. See United

the trade union leaders who worked strenuously to persuade the workers in their factories not to answer Iliescu's pleas for violence.<sup>82</sup>

#### B. Trade Unions Resist the Newly Elected Government's Economic Reform Initiatives: The Strike Becomes an Overt Political Weapon

The new government was presented to parliament on June 28, 1990. On that date, the reappointed Prime Minister, Petre Roman, called for a six-month moratorium on pay and working condition claims by Romania's trade unions.<sup>83</sup> Organized labor was understandably cool to the proposal, but the major confederations appeared to give their grudging consent, conditioned upon the government meeting various demands or conditions.<sup>84</sup>

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States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Feb. 2, 1990, at 5 (Feb. 2, 1990) (on file with author) (reporting allegations that, in January, the NSF arranged special trains to bring the miners from Petroșan, in the Jiu Valley, to Bucharest); United States Embassy (Bucharest), Daily Press Summary, ADEVĂRUL, Feb. 20, 1990, at 1; ROMÂNIA LIBERĂ, Feb. 20, 1990, at 1, 3 (Feb. 20, 1990) (on file with author) (reporting that over 5,000 miners came to protest an "attack" on government headquarters the previous day). Iliescu had reportedly won the miners' loyalty after he granted them pay increases in January which gave them the highest salaries in Romania except for the most senior government officials. Ariane Genillard, *Romanian Leader Blames Right Wing for Violence*, CHRISTIAN SCI. MONITOR, June 18, 1990, at 6.

By the June 1990 episode, Romanians had begun calling these incidents "mineriada," a play on words which evoked Ceaușescu's name for his communist sporting events—"daciada" (Romanians trace their heritage to the Dacian people, who inhabited the territory of present-day Romania during the time of the Roman Empire). The last "mineriada" (at the time of writing) took place during the author's stay in Bucharest. The Jiu Valley miners returned to Bucharest to demand that the government fulfill its promises of handsome economic benefits. As a result of this visit, and the violent street demonstrations it set off, the government of Prime Minister Petre Roman fell. See *infra* text accompanying notes 226-28.

82. In a speech on June 14, 1990, in the midst of the "mineriada," in which Iliescu praised the miners and other workers who had answered his call to arms, he took the occasion to make the following observation: "The trade union leaders, who are concerned only with their own well-being and who stop the workers from displaying their combat spirit, should be replaced." *Iliescu Addresses Victory Square Meeting on Unrest*, BBC Summary of World Broadcasts (Bucharest Home Service, June 14, 1990) June 16, 1990, available in LEXIS, Europe Library, Alleur File.

83. *Petre Roman Presents Government Programme and New Ministers*, *supra* note 25, at 19.

84. Frăția's initial response was supportive. Calling Roman's program "close to our soul," its leaders said the confederation was prepared to help prevent further social tension, characterizing strikes as "an extreme alternative to which one should resort only when all the other possibilities of settling [conflicts] were exhausted, because they do nothing else but deepen the economic crisis and worsen the employees' material condition." *Independent Trade Union Supports Government*, BBC Summary of World Broadcasts (Rompres in English, July 11, 1990) July 16, 1990, available in LEXIS, Europe Library, Alleur File. What Frăția sought in return was a delay in promulgation of the law on collective labor disputes during the moratorium period, greater union input into the law regulating trade unions and denial of CNSLR's access to UGSR's assets. United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, July 1, 1990, at 1 (July 2, 1990) (on file with author). CNSLR similarly agreed to the moratorium, as long as the government published certain wage

In mid-August, Prime Minister Roman met with a "joint working commission" established by Frăția, the Alfa Cartel, CNSLR and several smaller union organizations.<sup>85</sup> The participants hailed the meeting as the "starting point of organised and systematic talks between the government and trade union representatives," to be followed by the creation of joint government-union commissions "to focus on the questions that concern the trade union movement."<sup>86</sup>

While such a commission did materialize three months later,<sup>87</sup> trade union frustrations had already escalated into major unrest, mostly outside the ranks of the three large labor confederations. The trade unions in Braşov were the first to explode. Unhappy with the inadequate supply of raw materials and supplies in the large local machine-building enterprises, as well as the poor living conditions and absence of consumer goods, workers at the huge Tractorul factory struck on August 23, 1990, demanding that Prime Minister Roman come to Bra-

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data, froze consumer prices, ensured employment and retraining for persons losing their jobs due to economic reorganization and met its demands regarding various labor statutes under consideration in parliament, demands which also included a moratorium on the collective labor dispute legislation. United States Embassy (Bucharest), Daily Press Summary, DIMINEAȚA, July 14, 1990, at 6 (July 16, 1990) (on file with author).

The Alfa Cartel's public response came a few days later, on the heels of the government's decision to raise the price of gasoline. It demanded, among other things, a moratorium on the increase in the price of goods and services during the moratorium on salaries. United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, July 20, 1990, at 2 (July 20, 1990) (on file with author).

Following a series of meetings between high-level government officials and the trade unions, Frăția further conditioned its acceptance of the moratorium on the "eliminat[ion of] nationwide income disparities" and a freeze on consumer prices, combined with ensuring the availability of consumer goods. United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Aug. 7, 1990, at 3 (Aug. 7, 1990) (on file with author). CNSLR agreed to accept it until December 31, 1990, as long as the government worked out a program of consumer goods supply and refrained from exporting items that were in short supply on the domestic market. United States Embassy (Bucharest), Daily Press Summary, DIMINEAȚA, Aug. 4, 1990, at 7 (Aug. 6, 1990) (on file with author). One of the smaller trade union organizations, the Inter-Union Alliance, proposed that a new agreement replace the moratorium and attached a long list of requirements to its willingness to participate. United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Aug. 9, 1990, at 2 (Aug. 9, 1990) (on file with author).

Government leaders, in the meantime, were apparently telling the union representatives that the government would resign if the moratorium was not accepted. United States Embassy (Bucharest), Daily Press Summary, DREPTATEA, Aug. 9, 1990, at 2 (Aug. 9, 1990) (on file with author).

85. *Roman Meets Trade Union Leaders*, BBC Summary of World Broadcasts (Rompres in English, Aug. 17, 1990) Aug. 21, 1990, available in LEXIS, Europe Library, Allour File.

86. *Petre Roman Discusses Economy with Trade Unionists*, BBC Summary of World Broadcasts (Rompres in English, Aug. 20, 1990) Aug. 23, 1990, available in LEXIS, Europe Library, Allour File.

87. On November 15, 1990, Roman again met with the union leaders to establish a joint commission. United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Nov. 17, 1990, at 7 (Nov. 19, 1990) (on file with author).

sov to negotiate their demands.<sup>88</sup> The government denounced the strike, characterizing it as "unlawful" because it was taking place during the six-month moratorium.<sup>89</sup> Although the strikers returned to work a few days later,<sup>90</sup> the prospect of a renewed general strike still loomed.<sup>91</sup> This threat forced Roman to go to Braşov, where he met with the trade union leaders on September 7, assuring them that his economic reforms would lead to improvements in their conditions.<sup>92</sup>

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88. United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Aug. 24, 1990, at 2 (Aug. 24, 1990) (on file with author). Several days earlier, Roman had responded to the Infratirea trade union federation's ultimatum threatening a warning strike by sending a government commission to Braşov to meet with enterprise leaders, local politicians and trade union representatives. United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Aug. 21, 1990, at 3 (Aug. 21, 1990) (on file with author); *Prime Minister Orders Investigation of Brasov Strikes*, BBC Summary of World Broadcasts (Rompres in English, Aug. 21, 1990) Aug. 23, 1990, available in LEXIS, Europe Library, Alleur File. The unions were unimpressed. Following the commission's meeting at a rally held at the Tractorul stadium, thousands of workers booed the government representatives and demanded Roman's presence in Braşov. *Brasov Trade Union Meeting Calls for Direct Talks with the Premier*, BBC Summary of World Broadcasts (Rompres in English, Aug. 22, 1990) Aug. 24, 1990, available in LEXIS, Europe Library, Alleur File; *Government and Brasov Trade Unions Discuss Supply Problems*, BBC Summary of World Broadcasts (Rompres in English, Aug. 23, 1990) Aug. 25, 1990, available in LEXIS, Europe Library, Alleur File.

89. *Government Statement on Brasov Strike*, BBC Summary of World Broadcasts (Rompres in English, Aug. 27, 1990) Aug. 30, 1990, available in LEXIS, Europe Library, Alleur File. The government also asked the workers to reconsider and return to work, pointing out that the strike was costing the national economy over 20 million lei each day and creating great difficulties in other economic units. *Id.* The value of the leu, Romania's currency, relative to hard currencies such as the dollar, has changed dramatically since 1989. During the author's stay in Romania, the value of one dollar rose from about 240 lei to almost 400 lei.

90. United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Aug. 30, 1990, at 2 (Aug. 30, 1990) (on file with author). The government had promised them a number of structural changes in their enterprise intended to enhance its autonomy. United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Aug. 29, 1990, at 3 (Aug. 29, 1990) (on file with author).

91. The Infratirea federation was threatening a general strike if the Tractorul employees' demands were not met. United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Sept. 1, 1990, at 2 (Sept. 1, 1990) (on file with author). The Inter-Union Alliance expressed its solidarity with Infratirea. *Id.* at 3.

92. *Romanian Prime Minister Opens Talks with Free Trade Unions*, The Reuter Library Report, Sept. 7, 1990, available in LEXIS, Europe Library, Alleur File. Roman rejected their salary demands as unrealistic, but promised to analyze them in light of concessions granted to workers in other industries. United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Sept. 9, 1990, at 1, 2 (Sept. 10, 1990) (on file with author).

The government issued a communique after Roman's visit in which it agreed to coordinate the availability of resources. The government clarified, however, that in the future, each enterprise would be responsible for such matters in accordance with market economy principles. *Government Communique on Talks with Trade Unions*, BBC Summary of World Broadcasts (Rompres in English, Sept. 14, 1990) Sept. 17, 1990, available in LEXIS, Europe Library, Alleur File. Apparently, the Prime Minister was determined not to tolerate continuing pressure by enterprises to have the government solve their operating problems. United States Embassy (Bucharest), Daily Press Summary, NEUER WEG, Sept. 13, 1990, at 1, 2 (Sept. 13, 1990) (on file with author).

No sooner had the government weathered the Braşov events than the largest work stoppage since the 1977 miners' strike erupted. On September 17, 1990, over 25,000 workers at Constanţa harbor walked off the job, demanding the removal of allegedly anti-reform managers.<sup>93</sup> The walkout coincided with strikes by sailors on twenty-five Romanian ships in foreign harbors.<sup>94</sup> The workers sought changes in the fundamental nature of the business operation, not just improvements in their wages and working conditions.<sup>95</sup> Events took a decidedly political turn as the strikers asked Ion Raţiu, an opposition member of the Assembly of Deputies (and an unsuccessful candidate for president in the May elections) to take over control of the Romanian fleet, a request he declined.<sup>96</sup> Again, however, high-level negotiations, this time with the Minister for Public Enterprise and Transportation, resulted in satisfying the bulk of the strikers' demands and the strike ended on September 24.<sup>97</sup>

The month of October 1990 was relatively quiet. Not counting a number of minor work stoppages, the largest labor dispute occurred on October 29, when the STAR Federation of Road Transport Unions started a general strike which reportedly involved almost two-thirds of the nation's drivers.<sup>98</sup> The main complaints focused on the lack of spare parts, but other issues involving pay increases, holidays, and pensions led to an agreement between the government and federation officials to create legislation to address these problems.<sup>99</sup>

The government's decision to "liberalize" the prices of most goods and services, effective November 1, 1990,<sup>100</sup> sparked nationwide protests. The Alfa Cartel led the opposition from the ranks of the trade unions.<sup>101</sup> In general, the unions were opposed to the "shock therapy" in which prices would rise steeply on many goods, but salaries would not

93. Catherine Adams, *Strike Cripples Romanian Black Sea Port*, UPI International 1990, Sept. 17, 1990, available in LEXIS, Europe Library, Alleur File.

94. United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Sept. 20, 1990, at 1 (Sept. 20, 1990) (on file with author).

95. *Ion Ratiu Declines Strikers' Offer to Command Fleet*, BBC Summary of World Broadcasts (Rompres in English, Sept. 20, 1990) Sept. 22, 1990, available in LEXIS, Europe Library, Alleur File.

96. *Id.*

97. United States Embassy (Bucharest), Daily Press Summary, ADEVĂRUL, Sept. 25, 1990, at 1, 3 (Sept. 25, 1990) (on file with author).

98. *Road Transport Strike*, BBC Summary of World Broadcasts (Rompres in English, Oct. 30, 1990) Nov. 3, 1990, available in LEXIS, Europe Library, Alleur File.

99. *Id.* At the same time, however, the government authorized the Ministry of Defense to take over transportation of food and raw materials in the event of future transportation strikes. United States Embassy (Bucharest), Daily Press Summary, ADEVĂRUL, Oct. 31, 1990, at 1 (Oct. 31, 1990) (on file with author).

100. See *supra* text accompanying notes 33-37.

101. With membership drawn from many of the inefficient state industries at risk in an extended program of privatization, Alfa embraced a reform plan devised by economist Constantin Cojocaru. The plan centered on an immediate 100% privatization of property by transferring shares directly to all qualifying Romanian citizens. See Roxana Dascalu, *Trade Unions Challenge Romanian Austerity Policies*, The Reuter Library Report, Nov. 3, 1990, available in LEXIS, Europe Library, Alleur File.



increase. In addition, they also favored a greater emphasis on immediate privatization, rather than liberalization of prices in an economy still largely state-owned. Massive street demonstrations occurred in Bucharest, Braşov, Timişoara and other cities during the first two weeks in November. While there were no significant strikes during this time, there was talk of a general strike in the future.<sup>102</sup>

In the midst of the price liberalization uproar the government and the trade unions held several acrimonious sessions. On November 5, during a dialogue with the unions, Prime Minister Roman threatened to resign if controversy over government policy continued.<sup>103</sup> The representatives of the labor organizations present, including Frăţia and CNSLR, but not Alfa, emphasized that they backed the reforms in principle, but favored reversing priorities by placing privatization ahead of price liberalization, much as Alfa had been urging.<sup>104</sup>

The joint government-union commission Roman established as a vehicle for continuing dialogue with the trade unions over national policy held its first meeting on November 15.<sup>105</sup> This effort to divert demonstrations into discussion and negotiation failed. The next day, Frăţia condemned the commission as a sham "to keep up democratic appearances" and implemented under pressure from the European parlia-

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102. See generally Peter Humphrey, *Romanians Protest Against Government Economic Policy*, The Reuter Library Report, Nov. 2, 1990 (rally of 2,000 people in Bucharest sponsored by Alfa), available in LEXIS, Europe Library, Allleur File; United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Nov. 3, 1990, at 5 (Nov. 5, 1990) (on file with author); *Other Reports on Price Liberalisation; Trade Union Protest at Price Liberalisation*, BBC Summary Of World Broadcasts (Rompres in English, Nov. 3, 1990) Nov. 5, 1990, available in LEXIS, Europe Library, Allleur File (CNSLR protests the price liberalization); Peter Humphrey, *Demonstrators Roam Romanian Capital in Price Protests*, The Reuter Library Report, Nov. 3, 1990, available in LEXIS, Europe Library, Allleur File (third day of protests in Bucharest); Marc Champion, *Romanians Protest over Prices; "Shock Treatment" Enrages Workers*, WASH. POST, Nov. 6, 1990, at A15 (the continuing protests and background information); Ariane Genillard, *Romanians Protest Price Decontrol*, CHRISTIAN SCI. MONITOR, Nov. 8, 1990, at 8 (same); Peter Humphrey, *Romanian Price Protests Spread to Timisoara*, The Reuter Library Report, Nov. 8, 1990, available in LEXIS, Europe Library, Allleur File; Catherine Adams, *Tens of Thousands Protest Liberal Pricing throughout Romania*, UPI INT'L, Nov. 15, 1990 (protests in Braşov), available in LEXIS, Europe Library, Allleur File; *Thousands Demonstrate Against Romanian Government in Timisoara*, The Reuter Library Report, Nov. 8, 1990, available in LEXIS, Europe Library, Allleur File.

103. *Government and Trade Unions Discuss Price Liberalisation*, BBC Summary of World Broadcasts (Rompres in English, Nov. 5, 1990) Nov. 7, 1990, available in LEXIS, Europe Library, Allleur File.

104. *Id.* During this time, the government and its supporters in the Romanian press launched a counter-offensive against the "Cojocaru Plan," supported by the Alfa Cartel. See *supra* note 101. Terming it "ushering Stalinism into [the] economy by the back stairs," they stressed the need to phase in privatization more gradually. "Dimineata" Criticises Alternative Privatisation Scheme, BBC Summary of World Broadcasts (Rompres in English, Nov. 6, 1990) Nov. 9, 1990, available in LEXIS, Europe Library, Allleur File.

105. United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Nov. 17, 1990, at 7 (Nov. 19, 1990) (on file with author).

ment.<sup>106</sup> The Alfa Cartel refused to even participate.<sup>107</sup>

By early December, the Drivers' Union affiliated with Frăția was frustrated by what it saw as the government's unresponsiveness to the trade unions' demands and the economic crisis resulting from the price liberalizations. The Drivers' Union announced that its leadership had decided to call a nationwide strike for December 10. Its stated objective was the resignation of the government and its replacement with a new government of national coalition.<sup>108</sup> The strike commenced, notwithstanding the government's decision to postpone the next round of price liberalizations originally scheduled for January 1, 1991.<sup>109</sup>

The Drivers had the support not only of Frăția, their own confederation, but of six other national trade union organizations as well, including the Alfa Cartel and the usually non-militant CNSLR.<sup>110</sup> The

106. United States Embassy (Bucharest), Daily Press Summary, VIITORUL ROMANESC, undated, No. 14, at 3 (Nov. 23, 1990) (on file with author).

107. United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Dec. 5, 1990, at 1 (Dec. 5, 1990) (on file with author).

108. United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Dec. 7, 1990, at 5 (Dec. 7, 1990) (on file with author). The Drivers' commune also demanded that local government and enterprises be "purged" of "discredited" people. *Id.* The union promised to permit the transportation of food, as well as of supplies to hospitals, kindergartens and nursing homes. *Id.* See also *Drivers' Union Press Conference on Purpose of Strike*, BBC Summary of World Broadcasts (Rompres in English, Dec. 8, 1990) Dec. 11, 1990, available in LEXIS, Europe Library, Alleur File; United States Embassy (Bucharest), Daily Press Summary, DREPTATEA, Dec. 8, 1990, at 4 (Dec. 10, 1990) (on file with author) (a Frăția commune regarding the rally it planned for Bucharest on December 10, to coincide with the strike).

109. Initially, the government's plan had called for prices on basic foods, medicine and medical supplies to increase on January 1. This deadline was postponed until June 1. *Government Postpones Price Liberalisation*, BBC Summary of World Broadcasts (Rompres in English, Dec. 7, 8, 1990) Dec. 12, 1990, available in LEXIS, Europe Library, Alleur File.

While this decision was doubtlessly influenced by many factors, the government was clearly concerned with the threat posed by the Drivers' Union strike. At the same meeting in which price increases were postponed, the government discussed the strike threat. Later, the government spokesman reported that the Cabinet's view of the demands for its resignation and "other purely political claims" was that they were "antisocial, antinational and unlawful." *Id.* The government spokesman also discussed a more localized labor action, in which the Union at the Mediaș Gas Central was threatening to strike unless it was allowed to become autonomous. In response the spokesman said, "We must clearly state that the organization of economic units falls outside the competence of unions, hence to threaten a strike for such claims which are essentially administrative is also unlawful." *Id.*

110. *Drivers' Union Press Conference on Purpose of Strike*, *supra* note 108. CNSLR had demanded that the government hold high-level negotiations with it during this time, failing which it threatened to use "available forms of union protest." United States Embassy (Bucharest), Daily Press Summary, REALITATEA, Dec. 8, 1990, at 1 (Dec. 10, 1990) (on file with author); see also *Trade Union Confederation Sends Ultimatum to Government*, BBC Summary of World Broadcasts (Rompres in English, Dec. 8, 1990) Dec. 11, 1990 (same CNSLR commune), available in LEXIS, Europe Library, Alleur File. Prime Minister Roman and other cabinet ministers did meet with CNSLR on December 10, at which time it was agreed that the government would work more closely with them on pending labor legislation, enterprise reform and social protection measures. *Government and Trade Unions Hold Dialogue*, BBC Summary of World

organizations participated in a huge rally held in Bucharest on December 10.<sup>111</sup> Earlier that morning, the union leaders met with President Iliescu, who agreed to act as a mediator in talks scheduled with the government for the following day.<sup>112</sup>

The government-trade union talks occurred on December 11 and 12 in Bucharest where a Drivers' blockade denied access to everything except essential medical and security services.<sup>113</sup> Government concessions in those meetings, including an agreement to negotiate the terms of pending labor legislation covering strikes,<sup>114</sup> satisfied the Drivers and Frăția and they agreed to call off the strike, thus averting a threatened general strike by a coalition of labor organizations.<sup>115</sup>

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Broadcasts (Rompres in English, Dec. 10, 1990) Dec. 12, 1990, available in LEXIS, Europe Library, Alleur File.

111. *Drivers' Strike Begins with Rallies in Bucharest and Elsewhere*, BBC Summary of World Broadcasts (Rompres in English, Dec. 10, 1990) Dec. 12, 1990, available in LEXIS, Europe Library, Alleur File; see also United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Dec. 11, 1990, at 2 (Dec. 11, 1990) (on file with author).

112. *Trade Union Leader President Iliescu to Mediate in Round-table Talks* [sic], BBC Summary of World Broadcasts (Bucharest Home Service, Dec. 10, 1990) Dec. 12, 1990, available in LEXIS, Europe Library, Alleur File.

Following the meeting, Frăția's leader, Miron Mitrea, issued a statement to the press in which he expressed his organization's frustration in dealing with the government and its expectations for future influence:

Unfortunately, we can say that most trade unions and the Fratia confederation had left the joint commission organised at governmental level, for reasons which are easy to understand. We no longer accepted a consultative role. We want a commission where we can talk to the government, because in Romania there is no employers' organisation with which the trade unions can negotiate. Right now, in order to defend the rights of trade union members, we must negotiate with the sole de facto employer, [that is, the government]. In various consultative commissions, we . . . conducted consultations, but did not negotiate. We must negotiate all laws regarding the trade unions and strikes. The parliament is currently debating other draft laws. Consequently, that period was but a waste of time.

*Id.*

113. Adrian Dascalu, *Romanian President Mediates to Avert General Strike*, The Reuter Library Report, Dec. 11, 1990, available in LEXIS, Europe Library, Alleur File.

114. The agreement provided that Iliescu would resubmit the legislation on unemployment protection to parliament for reconsideration of amendments agreed to by the government and the trade unions; the government would analyze union proposals regarding amendments desired in pending legislation regarding collective labor disputes (the future Law 15/1991), collective bargaining (the future Law 13/1991), trade unions (the future Law 54/1991) and salaries, with agreed amendments to be submitted to Parliament; the joint government-trade union commission would begin to consider the problems caused by the restructure and reform program, starting with the problems of the Drivers; the government would take steps to insure improved food supplies. *Trade Unions and Government Hold Meeting*, BBC Summary of World Broadcasts (Rompres in English, Dec. 11, 1990) Dec. 15, 1990, available in LEXIS, Europe Library, Alleur File. The salaries of the Drivers were to be negotiated with the individual enterprises and enterprises would become autonomous. United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Dec. 13, 1990, at 5 (Dec. 13, 1990) (on file with author).

115. Roxana Dascalu, *Truckers to Halt Action, Premier Says General Strike Unlikely*, The Reuter Library Report, Dec. 12, 1990, available in LEXIS, Europe Library, Alleur File.

Frăția's willingness to forego broader political objectives when it achieved its more limited economic and labor-related goals probably saved Prime Minister Roman's government. The day after reaching the Drivers' agreement, however, on December 14, 1990, trade unions in Timișoara began city-wide strikes, demanding broad economic restructuring for local enterprises, as well as the government's dismissal. Occurring on the emotional first anniversary of the December 1989 uprising, the entire community, together with opposition political organizations from across Romania, rallied to their side.<sup>116</sup> Work stoppages continued in Timișoara until the middle of January, 1991.<sup>117</sup> By the time the union leaders agreed that workers at most of the local enterprises should return to work, the government capitulated to many of the strikers' demands.<sup>118</sup> The government did not fall, however, nor did the labor leaders' call for country-wide action produce results.<sup>119</sup>

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The atmosphere surrounding this labor dispute had by this time become highly charged politically, as opposition political groups had seized on the dispute as a way to topple the government. Many of the groups were greatly disappointed when the Drivers settled for satisfaction of their economic claims and ceased their strike. *Id.*

116. Chris Stephen, *Strikes and Protests Return to Timisoara*, Reuter Textline (Guardian), Dec. 15, 1990, available in LEXIS, Europe Library, Alleur File. As was the case with the demonstrations earlier in 1990 in support of the "Timișoara Proclamation," the protests in December 1990 began as a coalition of workers, students and opposition political groups, including the newly emerged Civic Alliance. *Id.*

117. For additional details on the events, see Vjekoslav Radovic, *Tens of Thousands of Workers and Students Protest in Timisoara*, Reuters, Dec. 19, 1990, available in LEXIS, Europe Library, Alleur File; *Romanians March Against Government*, S.F. CHRON., Dec. 20, 1990, at A20; *Anti-Government Strike Paralyzes Romanian City*, Reuters, Jan. 9, 1991, available in LEXIS, Europe Library, Alleur File.

118. Following January 11-12, 1991, meetings between the Minister of Resources and Industry and the union leaders, the government agreed to do the following in Timiș Judet (County): liberalize salaries; turn all Timiș enterprises into commercial or autonomous state enterprises; increase the enterprises' share of hard currency profits for foreign investments; and insure additional supplies of raw materials. United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Jan. 15, 1991, at 7 (Jan. 15, 1991) (on file with author). The unions rejected this compromise as incomplete, demanding that the reforms apply across Romania, not just in Timiș, and renewing their calls for the dismissal of the government and for other parts of the country to join their general strike. *Id.*

119. By January 16, the general strike ended in Timișoara, although a few labor leaders continued the protest as a hunger strike for a while longer. See generally United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Jan. 16, 1991, at 1, 2 (Jan. 16, 1991) (on file with author); United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Jan. 17, 1991, at 1, 2 (Jan. 17, 1991) (on file with author); United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Jan. 18, 1991, at 1, 2 (Jan. 18, 1991) (on file with author); United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Jan. 22, 1991, at 2 (Jan. 22, 1991) (on file with author).

During this time there was an important, but unrelated, labor dispute by the navigators at TAROM, the national airlines. Seeking higher salaries, they struck from December 14, 1990, until January 16, 1991. United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Dec. 15, 1990, at 1 (Dec. 17, 1990); *Tarom Navigators' Strike; All Flights Suspended from 19th December*, BBC Summary of World Broadcast, Dec. 19, 1990, available in LEXIS, Europe Library, Alleur File; United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Jan. 16, 1991, at 1 (Jan. 16, 1991) (on file with author). They disrupted air traffic into and within

The final significant labor unrest which preceded passage of Law 15/1991, the collective labor dispute statute, involved a strike which crippled important parts of the nation's rail system. The Free Union Convention of Railways and Subway, which had threatened a strike on February 8, 1991,<sup>120</sup> agreed to postpone the action for fifteen days, after the government granted 14 of its 20 demands.<sup>121</sup> Three of its local unions: the Iași, Timișoara and Caransebeș Departments, decided to proceed, however, and paralyzed several portions of the nation.<sup>122</sup> In the midst of this hotly contested dispute, Law 15/1991 came into effect and the government immediately invoked it as a basis for legal action against the strikers.<sup>123</sup> The following section will address the mixed results of this effort, as well as the extent of subsequent strike actions and the application of Law 15/1991.<sup>124</sup>

#### IV. Law 15/1991—Settlement of Collective Labor Disputes<sup>125</sup>

##### A. Legislative History of 15/1991

Communist Romania had no laws regulating collective labor disputes and strikes, as such events were not supposed to occur in a workers' state.<sup>126</sup> The law did not expressly forbid them; rather, there was a "legislative void."<sup>127</sup> After 1989, therefore, there was no legislative pre-

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Romania, with heavy concomitant economic loss to tourism and other industries dependent on air transportation. United States Embassy (Bucharest), Daily Press Summary, ADEVĂRUL, Dec. 21, 1990, at 5 (Dec. 21, 1990) (TAROM management characterize losses as "extremely high"); United States Embassy (Bucharest), Daily Press Summary, ADEVĂRUL, Jan. 9, 1991, at 1 (Jan. 9, 1991) (on file with author) (losses to a single commercial company put at five million dollars; flow of tourists "seriously" decreased).

120. United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Feb. 1, 1991, at 1 (Feb. 1, 1991) (on file with author). Their claims involved salaries, pensions, medical care, dismissal of "compromised members of the staff" and compensation for the prohibition of the right to strike. *Id.*

121. United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Feb. 9, 1991, at 1 (Feb. 11, 1991) (on file with author).

122. *Id.*

123. See *infra* text accompanying note 214.

124. See discussion *infra* section IV.D.

125. Extensive commentary on this statute, in Romanian, is contained in the following sources: ȘERBAN BELIGRĂDEANU, LEGISLAȚIA MUNCII 1990-1991, Vol. I, at 149-77 (Editura Lumina București 1991); GHEORGHE BREHOI & A. POPESCU, CONFLICTUL COLECTIV DE MUNCĂ ȘI GREVĂ (Editura Forum București 1991), at 42-115; Șerban Beligrădeanu, *Legea Nr. 15/1991 Pentru Soluționarea Conflictelor de Muncă*, DREPTUL, Number 2-3/1990, at 3-14; Șerban Beligrădeanu, *Dreptul la Grevă și Exercițarea lui*, DREPTUL, Number 6/1990, at 16-27.

126. A Romanian dictionary published in 1980 defined a strike ("grevă") as an "organized form of struggle of the working classes in conditions of capitalism." VASILE BREBAN, DICȚIONAR AL LIMBII ROMÂNE CONTEMPORANE (Editura Științifică și Enciclopedică București 1980).

127. BREHOI & POPESCU, *supra* note 125, at 40. After the government passed the Labor Code of 1950, with no references to collective labor disputes, "the problem of strikes and of collective labor disputes no longer constituted an object of study for Romanian legal doctrine." *Id.* at 40-41. Under the influence of Soviet doctrine, "the right to strike, without being expressly forbidden, was purely and simply ignored." *Id.* at 41

cedent to impede the NSF.<sup>128</sup>

The government first proposed regulations for collective labor disputes as early as April 1990. The Provisional Council of National Unity circulated a draft decree-law at that time, but withdrew it in the face of trade union protests.<sup>129</sup> Following the installation of the new government in June, the Ministry of Labor and Social Protection resumed work on draft legislation. The major trade union federations, however, demanded a moratorium on its implementation during the government's proposed six-month salary increase and strike moratorium as part of the price of their support for the government's proposal.<sup>130</sup> The trade unions resisted the government's draft legislation as being too restrictive,<sup>131</sup> and CNSLR attempted to ameliorate the restrictions in extensive amendments it proposed in late July.<sup>132</sup>

By October 1990, with massive trade union resistance to the government's policies, Prime Minister Roman pleaded with the parliament to pass the collective labor dispute law using emergency procedures.<sup>133</sup> His rationale for this legislation and a companion bill on trade union organization was revealing:

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(emphasis in original), citing 6 H. SINAY & J.C. JAVILLIER, *DROIT DU TRAVAIL, La Greve* (2d ed. Dalloz Paris 1984).

128. Romania previously had legislation regulating collective labor disputes, passed shortly after World War I and amended several times during and shortly after World War II, but this legislation was eliminated by the communist regime. *Id.* at 37-40.

129. Interview with Victor Ciorbea, President of CNSLR, in Bucharest, Romania, (Apr. 21, 1992). See also United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA MUNCITOARE, Apr. 23, 1990, at 2 (Apr. 24 1990) (on file with author) (Free Trade Union Federation in Chemistry and Petrochemistry demands CPUN not approve decree on strikes prior to consultation with trade unions); *Draft Law on Settling Strikes Published*, BBC Summary of World Broadcasts (Rompres in English, Apr. 26, 1990) Apr. 30, 1990, available in LEXIS, Europe Library, Alleur File (draft decree law submitted to public debate by Provisional Council of National Unity, followed by submission to the Council for approval in future sessions). Many of the features of Law 15/1991 were present in this initial proposal, including: emphasis on the right to work; mandatory conciliation; majority worker support as a prerequisite to a strike; and prohibition of the right to strike in many government operations and in essential sectors of the economy. *Id.*

130. See, e.g., United States Embassy (Bucharest), Daily Press Summary, DIMINEAȚĂ, July 14, 1990, at 6 (July 15, 1990) (on file with author) (CNSLR demands moratorium on the law regarding labor conflicts).

131. Miron Mitrea, president of Frăția, observed that under the government's draft, "[o]nly people who work at night will be able to strike during the day." Ariane Genillard, *Romania Moves Toward Private Enterprise—and Labor Strife*, CHRISTIAN SCI. MONITOR, July 31, 1990, at 5.

132. United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA MUNCITOARE, July 26, 1990, at 2 (July 26, 1990) (on file with author). A copy of the CNSLR proposal is on file with the author.

133. *Economic Report by Premier Petre Roman*, BBC Summary of World Broadcasts (Rompres in English, Oct. 18, 1990) Oct. 20, 1990, available in LEXIS, Europe Library, Alleur File (prime minister's economic report to a joint session of parliament).

We think that enactment of the trade unions bill and of the bill on labour conflicts . . . will stimulate work. A precise definition of the competence of unions and their sharp separation from the management process are mandatory for a normal course of the latter, for the benefit of employees first of all. Ambiguities in this respect bred tension and fear both of which are destabilizing and their sole result was a drop in production.

In its turn, the law on the settlement of collective labour conflicts can halt sudden, anarchic and abnormal walkouts. Thus, the right to strike must truly be the last efficient lever to be resorted to only after all the other ways of settling conflicts have been exhausted.<sup>134</sup>

Parliament passed the legislation on collective labor disputes in late 1990,<sup>135</sup> but the wake of the agreement ending the Drivers' Union strike in mid-December resulted in delaying presidential approval. Meanwhile, the government-trade union commission held discussions on proposed legislation in the labor field.<sup>136</sup> As a consequence of these discussions, President Iliescu refused to sign the bill and resubmitted it instead in late January 1991 for consideration of the trade unions' proposed amendments.<sup>137</sup> The government refused to support the recommendations of the joint government-trade union commission regarding these amendments, however, apparently in violation of its agreement to do so,<sup>138</sup> and parliament rejected them.<sup>139</sup> The Senate thus reapproved Law 15/1991 on February 7, 1991; the Chamber of Deputies approved and President Iliescu signed it on February 11.<sup>140</sup>

## B. Law 15/1991—The Concept of the "Collective Labor Dispute" and Mandatory Conciliation

### 1. The "Collective Labor Dispute"

At the heart of Law 15/1991 is the definition of collective labor disputes. Article 2(1) provides:

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134. *Id.* at 116.

135. The Chamber of Deputies approved it first, in early November. United States Embassy (Bucharest), Daily Press Summary, ADEVĂRUL, Nov. 7, 1990, at 3 (Nov. 7, 1990) (on file with author).

136. United States Embassy (Bucharest), Daily Press Summary, DIMINEAȚĂ, Dec. 21, 1990, at 1, 2 (Dec. 21, 1990) (on file with author).

137. United States Embassy (Bucharest), Daily Press Summary, ADEVĂRUL, Jan. 29, 1991, at 5 (Jan. 29, 1991) (on file with author).

138. United States Embassy (Bucharest), Daily Press Summary, REALITATEA, Jan. 29, 1991, at 1, 2 (Jan. 29, 1991) (on file with author). Victor Ciorbea, president of CNSLR, a participant at the debates on reconsideration in early February 1991, claims that the government's representative before the Senate was pleading for an entirely different version of the collective labor disputes law than that agreed upon in the joint commission. Ciorbea's efforts to persuade the legislators to approve the amendments were unsuccessful. Interview with Victor Ciorbea, *supra* note 129.

139. United States Embassy (Bucharest), Daily Press Summary, ADEVĂRUL, Feb. 2, 1991, at 5 (Feb. 4, 1991) (on file with author).

140. MONITORUL OFICIAL AL ROMÂNIEI, Partea I, Feb. 11, 1991, at 4 (the official text of the statute, "Lege pentru soluționarea conflictelor colective de muncă" was published in this edition of the *Monitorul Oficial*).

Conflicts regarding the economic and social professional interests of employees, whether or not they are organized in trade-unions, resulting from labor relations between the company, on the one hand, and its employees or the majority of its employees, on the other hand, represent collective labor disputes and are to be settled according to the provisions of the present law.<sup>141</sup>

Significantly, only primary disputes, or those between an enterprise and its own workers, are recognized as collective labor disputes. Worker grievances stemming from dissatisfaction with the acts of others, including government policy and the conduct of other employers, as opposed to the acts or policy of their own employer, presumably are not recognized as legitimate collective labor disputes under the statute. In short, sympathy strikes and secondary boycotts are not within the law's scope. As a result, the employer is under no duty to respond to employee demands in such cases or to participate in the statutory conciliation procedures. Moreover, the employees could never lawfully strike over such demands. Article 5 directs that "employees may go on strike only under the conditions stipulated in the present law"<sup>142</sup> and Article 22 includes as a condition that "all possibilities of settling the collective labor dispute were previously exhausted through the [statutory conciliation] procedures . . . ."<sup>143</sup>

Given the definition of collective labor dispute, industry-wide or nation-wide disputes would have to be processed as individual company-based matters through the first two stages of the statute's conciliation machinery before a trade union could be assured of the legality of any wider work stoppage. For example, strikes such as that of the Drivers' Union in December 1990 could not progress lawfully without first processing a collective labor dispute through the stage of mandatory conciliation before the Ministry of Labor and Social Protection's representative in each and every enterprise in which Drivers' Union members would stop work. As a practical matter, labor disputes at the level of trade union federations (industry-wide disputes) or confederations (multi-industry disputes) would be so cumbersome to process correctly that procedural inadequacies and timing difficulties would probably make successful national coordination of the requisite statutory compliance very problematic.<sup>144</sup>

Furthermore, the statute addresses disputes arising from "labor relations." Arguably, therefore, worker unhappiness with company

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141. Law 15/1991, art. 2(1). Article 2(2) adds to the basic definition disputes within enterprise subunits and those involving specific professions or trades within an enterprise. One commentator described the subsection as adding little of significance to the concept of the collective labor dispute. ȘERBAN BELIGRĂDEANU, *LEGISLAȚIA MUNCII 1990-1991*, Vol. I, at 151 (Editura Lumina București 1991).

142. Law 15/1991, art. 5.

143. *Id.* art. 22.

144. This prediction was the view of one of Romania's most influential labor leaders. Interview with Victor Ciorbea, *supra* note 129.



actions in other areas, such as marketing, advertising or product design, would not qualify as a collective labor dispute.

In addition to limiting collective labor disputes to those arising from the company's labor relations policy or practice, the statute expressly excludes from treatment as collective labor disputes two kinds of disputes that might otherwise qualify. The first entails those conflicts between workers and their enterprise which are subject to legal regulations other than Law 15/1991.<sup>145</sup> The second kind includes employee claims which would require the adoption of a new law in order to settle them.<sup>146</sup> For example, again using the Drivers' December 1990 strike, if the workers sought a change in licensing requirements for professional truck drivers, their demands could not form the basis for a collective labor dispute, the predicate for a strike, because the relief they sought could only be provided by amending existing law. Thus, as with disputes not centered in the employer's labor relations practices or policies, the employer would be under no duty to follow the conciliation procedure to resolve the employees' grievances on such subjects, and the employees could not lawfully strike to secure their demands.

Despite the limitations inherent in the concept of "collective labor dispute," in other respects, the statute's coverage is remarkably broad. Its definition of "enterprise" or "company," covers virtually every employer in Romania, public as well as private.<sup>147</sup> Thus, as long as the subject involves the employees' "economic and social professional interests" and the conflict results from the employer's labor relations policy, and its settlement is neither governed by other existing laws nor would require passing a new law, Romanian employees and employers *must* attempt to settle the dispute by following Law 15/1991's conciliation procedures.<sup>148</sup>

## 2. The Mandatory Conciliation Procedure

The burden is upon the trade union<sup>149</sup> to initiate the conciliation pro-

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145. Law 15/1991, art. 3(a).

146. *Id.* art. 3(b).

147. According to Article 6, "[f]or the purposes of the present law, 'company' shall mean: autonomous state organizations, state or privately owned companies, other profit-making organizations, public institutions, associations [or] any type [of] state bodies." *Id.* art. 6. The terms "enterprise" and "company" are used interchangeably in this article.

148. In fact, although the statute is far from clear on this point, it would appear that collective labor disputes in certain enterprises (power companies, the "operative departments of nuclear reactors," "companies with continuous functioning the cessation of which brings the danger of explosion," defense industries and civil personnel in the Ministry of National Defense and the Ministry of Internal Affairs) must be resolved at the second stage of conciliation, with the assistance of the conciliator assigned by the Ministry of Labor and Social Protection. *Id.* art. 45(1)(b), (2). See BELIGRĂDEANU, *supra* note 141, at 173 (the language that the parties "shall settle" the demands is "imperative"). In any event, the statute clearly forbids strikes in such enterprises. Law 15/1991, art. 45(1). See *infra* text accompanying notes 165-66.

149. The statute provides that, in addition to trade union representatives, "[i]n case that in the company a trade union has not been set up or not all the employees

cess. Under the statute, a collective labor dispute does not exist until the trade union has first presented the employees' demands to the company, along with a statement of "their motivation" and proposals for settlement,<sup>150</sup> and the company has either rejected some or all of the demands or has not responded in writing within forty-eight hours.<sup>151</sup>

Once the company has either refused to agree with the trade union's demands or failed to answer within forty-eight hours, a collective labor dispute is considered to have begun and the trade union must notify the local office of the Ministry of Labor and Social Protection to request conciliation.<sup>152</sup> Within twenty-four hours of registering the notification, the Ministry must appoint a representative to conduct conciliation.<sup>153</sup> The conciliator, in turn, must notify the appropriate company manager within forty-eight hours of his or her appointment<sup>154</sup> and must convene the parties for conciliation no later than seven days from the registration of the trade union's notification with the Ministry.<sup>155</sup>

Articles 13 and 14 of the statute regulate who can represent the company and the trade union in the conciliation proceeding. Apparently, the company's manager may either be the sole representative, or may appoint a delegation of two to five members from its Board of Administration.<sup>156</sup> The workers must elect trade union representatives, on the other hand, each time a new dispute arises.<sup>157</sup> The only persons who can qualify to run in such an election are those who have been company employees for at least three years (or from the company's founding, if less than three years old), who are twenty-one years old, and who have not been convicted of violations of the criminal provisions of Law 15/1991 (Articles 46 and 47) or of Article 64 of Romania's Penal Code.<sup>158</sup> These provisions prevent the trade union leadership from freely designating representatives of their own choosing, both because the employees themselves must choose representatives, in an election specific to each individual enterprise dispute, and because many persons

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are trade union members, the employees will elect their representatives in order to settle the collective labor dispute." Law 15/1991, art. 4(2). In order not to unduly complicate the narrative, situations requiring such ad hoc employee representatives will not be discussed herein.

150. *Id.* art. 7. The demands must be in writing, unless the company management receives the required submission orally and records it and any discussions "in a report." *Id.* art. 7(2), (3).

151. *Id.* arts. 8, 9.

152. *Id.* art. 10. Two written copies of the notification must be submitted, signed by the authorized trade union representative and containing the name of the company and its manager, the object of the dispute and its motivation, proof that the demands have been properly presented to the company and not resolved at that level, and the names of the persons authorized to represent the trade union. *Id.* art. 11.

153. *Id.* art. 12.

154. *Id.* art. 12(a).

155. *Id.* art. 12(b).

156. *Id.* art. 14.

157. *Id.* art. 13(1).

158. *Id.* art. 13(3).

who might otherwise be chosen in such elections would be ineligible under the statutory restrictions. These restrictions are only partially offset by another section which allows representatives of the federation or the confederation with which the trade union is affiliated to be members of the trade union delegation.<sup>159</sup>

The conciliation proceeding must be completed on the day the parties are convened, unless the parties agree that it may continue longer.<sup>160</sup> The "statements of the parties and the result of the debates" are to be recorded in a report, which the parties and the conciliator each sign and retain a copy.<sup>161</sup> This record must specify which of the demands were settled and which were not, as well as "the points of view of each party regarding the latter."<sup>162</sup>

If the parties reach an agreement during the conciliation proceeding, it is binding on all parties to the collective labor dispute "for the entire period agreed upon."<sup>163</sup> Whether or not they reach full agreement, the trade union representatives must communicate the results of the conciliation to the employees.<sup>164</sup>

It is unclear whether this requirement of mandatory conciliation will be an effective device to resolve collective labor disputes. Given the lack of emphasis on the actual mediating role of the official conciliator, however, as well as the freedom of either disputing party to refuse to continue conciliation beyond the first day, mandatory conciliation often will be reduced to a pro forma exercise, with the parties simply stating their cases in front of the government's representative before moving on to the strike phase of the dispute.

## C. Strikes

### 1. *Workers Precluded from Striking*

Although nearly all public and private employees can, and indeed must, process collective work disputes through the conciliation process before the Ministry of Labor and Social Protection, a vast number of workers in the government and in crucial state-run enterprises have been deprived of the right to strike. First, all professional and technical employees (those with "specialized functions") of Parliament, the Government, the ministries and other central administrative agencies, prefects (representatives of the central government in each county), as well as all public prosecutors, judges, employees of the Ministries of National Defense and Internal Affairs and their subordinate units, and military personnel of the Ministry of Justice are prohibited from declaring strikes.<sup>165</sup> Second, the employees of companies that are part of the national power

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159. *Id.* art. 13(1).

160. *Id.* art. 15(2).

161. *Id.* art. 16(2), (3).

162. *Id.* art. 18.

163. *Id.* art. 17.

164. *Id.* art. 19.

165. *Id.* art. 45(1)(a).

system, of the operating departments of nuclear reactors, of "companies with continuous functioning the cessation of which brings the danger of explosion" and of companies in the defense industry are likewise denied the right to strike.<sup>166</sup> Finally, transportation employees may not strike outside the boundaries of Romania.<sup>167</sup>

In addition to the total prohibition of strikes by these employees, the statute also limits another large group of workers, some of whom may eventually work for private as well as public employers, to strikes which can only partially shut down their enterprise's normal activity. This unusual restriction requires the continuation of at least one-third of the essential services with strikes in the fields of health care, pharmaceuticals, education, telecommunication, radio and television, railways, airlines, as well as state enterprises supplying public transportation, public sanitation, bread, milk, meat, gas, electric power, heat and water supplies.<sup>168</sup>

## 2. *Unlawful Objectives*

In addition to the foregoing restrictions on strikes by specified categories of workers, all employees are precluded from striking in support of certain kinds of demands. First, no demand that cannot give rise to a "collective labor dispute" can result in a lawful strike. As discussed above,<sup>169</sup> all of the following are thus unlawful: sympathy strikes; strikes to change the policy of an entity, including the government, other than the direct employer; strikes to change an employer's policy in fields other than labor relations; and strikes for demands concerning subjects whose regulation is either governed by existing law or would require the passage of a new law.

In addition, Article 24(2) of the statute prohibits strikes "aim[ed] at political purposes."<sup>170</sup> At a minimum, strikes with the express goal of bringing down the government are unlawful. Thus, the NSF government erected a legal barrier against the most direct challenge the trade unions posed to its continued existence. Repetition of general strikes

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166. *Id.* art. 45(1)(b).

167. *Id.* art. 45(3). Sailors on merchant marine ships sailing under the Romanian flag may strike only in accordance with the norms established by international agreements ratified by Romania. *Id.*

168. *Id.* art. 45(4). Exactly what will constitute compliance with the "maintenance of 1/3 essential services" requirement is certain to cause major judicial headaches. In probably its first legal test, a suit under Article 33 involving railway unions in Bucharest, the railway management argued that the statute required the unions to assure that one-third of the operations on which the strikers normally worked had to be kept running. The strikers took the position that, since their operations were only a small part of the overall national railroad system, the statute was satisfied because far more than one-third of the essential services were functioning even though their operations were entirely shut down. Interview with Magistrate Daniela Lupăș, Sector One Judicatorie, in Bucharest, Romania (Mar. 18, 1992).

169. See discussion *supra* part IV.B.1.

170. Law 15/1991, art. 24(2).

such as the ones in December 1990 by the Drivers' Union<sup>171</sup> and by the Timișoara unions<sup>172</sup> could henceforth result in legal action that would not only put an immediate end to the work stoppages, but could also lead to personal liability of those responsible for them.<sup>173</sup>

The implications of the "no political objectives" provision are much broader, however, given the fact that for the foreseeable future, the Romanian state will continue to own or run vast sectors of the Romanian economy. Many trade union objectives that other nations would consider to be purely economic will thus be labelled "political" in Romania because their satisfaction would require government action. The potential reach of this proscription is thus great, especially as it works in tandem with the prohibitions described in the first paragraph of this subsection.

The kinds of strikes that so bedeviled the NSF government from its beginning are also forbidden, namely, those aimed at forcing changes in company management. Article 24(3) bars strikes to annul a company's cancellation of an employment contract, its employment of a person, or its change of a person's job.<sup>174</sup> Thus, strikes in support of one of labor's most common demands during the period of transition from communism, replacement of ineffective or obstreperous company officials, were outlawed. This restriction appears calculated to reinforce Prime Minister Roman's objective of strengthening the power of enterprise management vis-a-vis labor.<sup>175</sup>

Finally, Article 25 prohibits strikes seeking to change any of the following during the time they are in force: collective bargaining agreements; other agreements, including those reached in previous conciliation proceedings under this statute; and decisions of an arbitra-

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171. See *supra* notes 110-15 and accompanying text.

172. See *supra* notes 116-19 and accompanying text.

173. See discussion *infra* part IV.C.4.

174. Law 15/1991, art. 24(3). Even though this restriction accomplishes the government's goal of ending strikes to force personnel changes, it also reflects existing Romanian law:

On the other hand, the provision of art. 24 para. 3 is natural, it being an established norm in force from the principle of art. 19 letter c of the Labor Code (guaranteeing stability in work) or of those which regulate the jurisdiction in the domain of the individual labor dispute. Or, again, it cannot be conceived that the parties "conciliate" concerning the modification or the dissolution of the labor contract of any person or changing the solutions pronounced by the competent jurisdictional organ of labor.

Through the provisions of art. 3 letter b [employee claims requiring the adoption of a new law] and art. 24 para. 2 [political objectives] and 3 [personnel changes], Law nr. 15/1991 has a tendency to pierce the former social practice in Romania (in the period from January 1990 until the entry in force of the law), in keeping with which—the nonexistence of a legal regulation which established the conditions of exercise of the right of strike—the striker demands were, very frequently, exactly of the nature of those referred to in the mentioned text.

Șerban Beligrădeanu, *Legea Nr. 15/1991 Pentru Soluționarea Conflictelor Colective de Muncă*, DREPTUL, Nr. 2-3/1990 [sic], at 4.

175. See *supra* text accompanying notes 29-30.

tion commission, under Article 43 of this statute, which ended earlier strikes.<sup>176</sup> As a result, trade unions may not attempt to force renegotiation of voluntary agreements, presumably even those made by other unions,<sup>177</sup> and they may not strike to change imposed terms of settlements reached in compulsory arbitration.<sup>178</sup>

### 3. *Conditions for Initiating and Maintaining a Strike*

Assuming that a given body of workers is permitted to strike and that their collective labor dispute concerns an object for which it is permissible to strike, they must observe the conditions precedent to lawfully initiating and maintaining a work stoppage. As a preliminary matter, workers may not declare a strike until "all the possibilities of settling the collective labor dispute were previously exhausted through the settlement procedures provided in [the internal and Ministry of Labor and Social Protection conciliation provisions of Articles 7-19 of Law 15/1991] . . . ."<sup>179</sup> Moreover, the workers must notify the company management forty-eight hours before the commencement of the strike.<sup>180</sup>

Another important precondition to a lawful strike weakens the power of trade union leaders in the name of democratic decision-making and the employees' right to work. In a sense, the entire statute rests on the basic principle, contained in its first article, that "[t]he exercise of the right to work . . . [is] guaranteed by Romanian law and may not be restricted."<sup>181</sup> Protection of this right results in the statute's description of the strike as "a collective *and voluntary* cessation of labor."<sup>182</sup> The statute thus combines concepts of voluntarism and collectivity to reach a principle of majority rule. The workers themselves must approve a work stoppage; a majority must agree to declare a strike before one can legally begin.<sup>183</sup> If, once commenced, half of employees abandon the

176. Law 15/1991, art. 25.

177. In fact, this issue was raised by one of the railway trade unions, which was the defendant in a damages suit brought under Article 33. The trade union claimed that the collective bargaining agreement terms it sought to change by a strike were ones negotiated by a previous union; it claimed that it had not signed the agreement, therefore it should not be estopped from striking in order to reach a new agreement. Interview with Magistrate Daniela Lupaş, Sector One Judicatorie, in Bucharest, Romania (Mar. 18, 1992). The court ruled against the trade union on this issue, holding that while the agreement was in effect, no strike to change its terms was lawful, even a strike by a union which was not a party to it. Telephone Interview with Magistrate Daniela Lupaş (Oct. 25, 1992).

178. See discussion *infra* part IV.C.6.

179. Law 15/1991, art. 22.

180. *Id.*

181. *Id.* art. 1. This right currently finds its ultimate source in Article 38(1) of the Romanian Constitution of 1991, which provides: "The right to work cannot be restricted. Professions and jobs may be freely chosen." Flanz, *supra* note 1, at 12.

182. Law 15/1991, art. 20(1) (emphasis added).

183. *Id.* The strike vote must be by secret ballot if the employees are not represented by a trade union, but apparently this is not required if they are unionized. *Id.*

This requirement of majority support to sustain a strike is particularly onerous in a labor relations environment in which more than one trade union may represent a given unit of workers. It is not uncommon for a single factory to have several differ-

strike, "it must cease."<sup>184</sup>

Other articles protecting the rights of non-strikers also reflect the primacy of the right to work. Under Article 26, participation in a strike is voluntary, no one can be forced to participate, or refuse to participate in a strike, non-strikers may continue their work, and strikers "must refrain from any action meant to hinder the continuation of activity by those who do not participate in the strike."<sup>185</sup> Persons found to have forced workers "by threats or violence" to participate in a strike, or to work during one, are subject to fines and imprisonment up to six months.<sup>186</sup>

During the course of an on-going strike, its organizers have a number of continuing duties toward the company, in addition to refraining from interfering with the activities of non-strikers. They must "protect the company's assets and . . . ensure the continuous functioning of equipment and facilities which, by ceasing to function, would endanger people's lives and health or may cause irreparable damages."<sup>187</sup> Neither the organizers nor the striking employees may hinder the company management in carrying out its duties.<sup>188</sup> Lastly, the organizers have a duty to continue negotiations with management to resolve the claims underlying the collective labor dispute.<sup>189</sup>

#### 4. *The Employer's Recourse Against "Illegal Strikes"*

Violation of any of the foregoing limitations on what constitutes a lawful strike, or of any of the requirements for its lawful conduct, results in an illegal strike. An enterprise manager faced with an illegal strike may bring suit in the district court (*judicătorie*) where the enterprise headquarters is located.<sup>190</sup> The court must set a hearing within three days,<sup>191</sup> at which time it must either reject the application of the enterprise or approve it and order the strike's cessation.<sup>192</sup> An aggrieved party must file an appeal from the district court's judgment with the county court

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ent unions representing workers in the same job classifications. When one trade union feels the need to strike, but the others do not agree, the statute would appear to hamstring the former.

184. Law 15/1991, art. 23. According to a leading authority on the statute, the correct interpretation of this provision is that one-half of the strikers, not of the total number of employees, must renounce the strike. BELIGRĂDEANU, *supra* note 141, at 165.

185. Law 15/1991, art. 26. A successful strike which completely shuts down a company's operations is not deemed a prohibited hindrance of non-strikers' activities, however. *Id.* art. 26(4).

186. *Id.* art. 46(1).

187. *Id.* art. 27.

188. *Id.* art. 28.

189. *Id.* art. 32(1). In the event agreement is reached, the strike is to cease. *Id.* art. 32(2). Refusal to negotiate makes the strike organizers liable to the company for "the damages caused to [its] assets" during the strike. *Id.* art. 32(3).

190. *Id.* art. 33.

191. *Id.* art. 34.

192. *Id.* art. 35(1).

(tribunal) or the Bucharest municipal court.<sup>193</sup> After the courts declare the strike illegal and order its cessation, they also are expected to "decide upon compelling the guilty persons to indemnify the company claims for the damage caused to it."<sup>194</sup>

Law 15/1991 provides generally that strikers and strike organizers cannot suffer negative consequences as a result of strikes which observe the provisions of the statute.<sup>195</sup> In the event a court declares a strike illegal, however, the employer may lawfully discharge strikers who persist in their work stoppage after that decision, in addition to seeking damages.<sup>196</sup>

##### 5. *Employer-Initiated Judicial Suspension of Strikes Affecting Major National Economic or Humanitarian Interests*

Articles 30 and 31 offer employers the prospect of temporarily forestalling some strikes that otherwise are lawful in all respects. Under their provisions, company managers faced with a collective labor dispute may petition the Romanian Supreme Court to suspend commencement of an impending strike, or its continuation, if already begun, for up to ninety days;<sup>197</sup> the court may act if "major interests of the national economy or humanitarian interests are affected by it."<sup>198</sup> The court must make a decision within seven days of the filing of the company's petition,<sup>199</sup> and its judgments are final.<sup>200</sup> Thus, national or regional transportation strikes, like that of the Drivers' Union in December 1990, as well as that of the rail workers in February 1991, are probably always vulnerable to suspension in the national interest. In fact, the government immediately invoked these provisions against the railway strikers upon Law 15/1991's passage, an event discussed below.<sup>201</sup>

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193. *Id.* art. 35(2).

194. *Id.* art. 36(3). The statute is ambiguous on the point of whether the court of first instance (the district court) or only the appellate court (the county court) may award damages. One Romanian commentator suggests that the district court has such power. BELIGRĂDEANU, *supra* note 141, at 169. Beligrădeanu also insists that only the strike organizers, as distinct from the other workers, are liable for the payment of damages under the terms of Article 36(3). *Id.* at 168. Individual worker liability could lie, however, under provisions of the Labor Code or other principles of civil liability if, for instance, they destroyed enterprise property. *Id.* at 170. Law 15/1991 itself envisions this prospect. Article 48 states that "[t]he employees' participation in a strike does not eliminate their material, contraventional, civil or penal responsibility, as the case may be, if the actions carried out during the strike entail this responsibility, according to law." Law 15/1991, art. 48.

195. Law 15/1991, art. 29(1). Strikers also keep all rights under collective bargaining agreements except the right to wages and other payments. *Id.* art. 29(3).

196. *Id.* art. 29(2). The same is true for strikers whose strike has been suspended under Article 30. *Id.*

197. *Id.* art. 30.

198. *Id.*

199. *Id.* art. 31(1).

200. *Id.* art. 31(2).

201. See *infra* notes 215-18 and accompanying text.



### 6. Government-Initiated Mandatory Binding Arbitration

In addition to the two remedies afforded to the affected companies, Law 15/1991 also gives the central government the power to stop certain strikes and to force the resolution of the underlying collective labor disputes in a binding arbitration proceeding. Under the statute, the Ministry of Labor and Social Protection enjoys tremendous discretion in this regard, which does not appear to be subject to judicial review.

Under Article 38(1), if a strike continued for twenty days without an agreement between the disputing parties and if the Ministry of Labor and Social Protection determines that its continuation "may affect the interests of the national economy or humanitarian interests," the Ministry may "request that the collective labor dispute be settled by an arbitration committee."<sup>202</sup> The trade union must suspend the strike on the day the Ministry communicates its initiative in writing to the parties.<sup>203</sup>

The parties then select a committee of three arbitrators,<sup>204</sup> the company, trade union and Ministry of Labor<sup>205</sup> each selecting one arbitrator. The parties select from a list of prospective arbitrators the Ministry of Labor and Social Protection will compile once a year, after consultation with the trade unions and the Romanian Chamber of Commerce and Industry.<sup>206</sup>

Once the parties appoint an arbitration committee, they must submit to it all written documentation concerning the collective labor dispute as well as statements of their positions.<sup>207</sup> Then, within three days of receiving this material, the committee is required to convene the parties and "together with them examine the collective labor dispute, on the basis of the provisions of [Law 15/1991] and of the applicable provisions of collective bargaining agreements."<sup>208</sup> The committee is expected to reach a "final resolution" within twenty-four hours of the end of these proceedings.<sup>209</sup> On the basis of this resolution, "the collective labor dispute shall cease."<sup>210</sup>

The various aspects of this binding arbitration procedure reflect a desire to empower the government to end major strikes and the underlying disputes permanently. First, it is within the sole prerogative of a

202. Law 15/1991, art. 38(1) (emphasis added).

203. *Id.* art. 38(2). Although the statutory language speaks of a "suspension," ("se suspendă continuarea grevei") in reality the strike is ended permanently, because a binding arbitration decision will resolve the dispute, which, under Article 25, cannot be the basis for any further lawful strike activity. *Id.* art. 25.

204. *Id.* art. 39(1).

205. *Id.* art. 40.

206. *Id.* art. 39(2). No readily identifiable pool of such persons exists in Romania because there is no history of using neutral arbitrators. During a number of discussions the author had with Romanian trade unionists in late 1991 and early 1992, the subject of the difficulty of selecting qualified persons to recommend for inclusion on this list arose repeatedly.

207. *Id.* art. 42.

208. *Id.* art. 43(1).

209. *Id.* art. 43(2).

210. *Id.* art. 43(4).

government ministry to initiate arbitration. Neither the parties nor the courts can force a binding arbitral resolution to an otherwise lawful strike, the ninety-day suspension under Article 30 constituting the only other basis for temporarily interrupting the workings of economic weapons in such cases. The only limitations on the government's invocation of arbitration, that the strike has progressed for at least twenty days and that it "may" affect the national economy or humanitarian interests, merely delay the use of the government's power, for apparently there is no check on its determination that the necessary harmful effects might occur.

Second, the government has an advantage whenever its interests and those of the company are parallel, given that together they appoint a majority of the arbitration committee. This advantage remains as long as so many companies remain under government ownership.<sup>211</sup>

Finally, once the labor dispute has ended on the basis of the arbitration committee's decision, the law forecloses any future strikes over the issues concluded therein. As noted previously,<sup>212</sup> "[s]trikes may not be declared for obtaining changes in . . . an arbitration commission's final resolution [under Article 43] by which a collective labor dispute has been settled . . . ."<sup>213</sup>

#### D. The Impact of Law 15/1991 on Labor Disputes in Romania

The legal regime for regulating collective labor disputes and strikes thus consists of several different aspects. Workers in fields considered crucial to national security and well-being, regardless of whether their companies will eventually be privatized, either cannot strike at all or their ability to do so is so restricted that a successful strike is unlikely, in light of the requirement that at least one-third of the essential services must be continued. In addition to the prohibition of striking to change government policy or existing law, no one may strike over acts or policies of anyone other than their employer. One may not strike to force changes in management or in enterprise policies or practices outside the labor relations area. No strike may begin until at least forty-eight hours after the completion of the mandatory conciliation procedures. Realistically, this provision entails that it will take approximately eleven days from the trade union's presentation of its demands before a lawful strike can begin. Strikes supported by only a minority of workers are illegal and strikers must avoid hindering either strike-breakers or management in

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211. Romanian trade union leaders certainly hold this view. In discussing the relationship of the management of state-owned companies and of employers' groups like the Romanian Chamber of Commerce and Industry to the government itself, the union representatives stressed that they saw them as essentially one and the same. Interview with Victor Ciorbea, *supra* note 54 ("These so-called owners are state employees . . ."). Interview with Miron Cosma, *supra* note 43 (The miners have no interest in tripartite collective bargaining, as it "is a case of 'two on one,' with the government and employers being the same party.").

212. See *supra* text accompanying notes 176-78.

213. Law 15/1991, art. 25.

any way. Furthermore, the strike organizers have an affirmative duty to cooperate with management, and in many cases, to assure continued operations during the strike. Courts may enjoin strikes which are in any respect illegal and may assess damages against the organizers, and in some cases, individual workers. Workers who continue to strike in the face of a court order risk loss of their jobs. The Supreme Court may suspend for ninety days strikes which will affect the national economy or humanitarian interests. After twenty days, the Ministry of Labor and Social Protection may halt those strikes which "may" affect those interests, in addition to imposing a binding resolution of the underlying dispute by a committee whose majority is appointed by the government and the company.

The cumulative effect of these restrictions has been to neutralize the strike as a significant weapon in the Romanian labor movement's arsenal. This neutralization did not occur immediately upon passage in February 1991. By the end of that year, however, the strike had virtually disappeared as a meaningful part of trade union tactics.

The role of Law 15/1991 was not always readily apparent in the labor strife which occurred after its passage. Reported instances of the courts or the government actually invoking the law have been relatively infrequent. In fact, the first effort to apply it ended with the strikers in question, the railway workers in the Iași and Timișoara rail strike of February 1991, essentially flouting the law. On February 15, the Supreme Court, acting under Article 30, issued a ruling to suspend the strike for sixty days, based upon the government's assertions that it imperiled the national economy and humanitarian interests.<sup>214</sup> The strikers ignored the ruling, however, arguing that the law was invalidly applied to them for three reasons: a government ministry and not the railway employer sought the ruling, the strike began before the law's effective date and the law itself was invalid.<sup>215</sup> The strike continued for six more days after the Supreme Court's ruling, ending only when ministry-level negotiators, with the help of President Iliescu, succeeded in satisfying the strikers'

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214. *Transport Ministry Issues Communique on Railway Strikes*, BBC Summary of World Broadcasts (Rompres in English, Feb. 13, 1991) Feb. 15, 1991, available in LEXIS, Europe Library, Alleur File; United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Feb. 15, 1991, at 1 (Feb. 15, 1991) (on file with author); United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Feb. 16, 1991, at 1 (Feb. 19, 1991) (on file with author); *Romanian Supreme Court to Hear Railway Strike Case*, Xinhua General News Service, Feb. 15, 1991, available in LEXIS, Europe Library, Alleur File.

215. United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Feb. 16, 1991, at 2 (Feb. 19, 1991) (on file with author). While most government representatives and railway department officials immediately took the position that Law 15/1991 controlled the dispute from the date of its promulgation, United States Embassy (Bucharest), Daily Press Summary, TINERETUL LIBER, Feb. 14, 1991, at 2 (Feb. 14, 1991) (on file with author), the unions and at least one deputy state minister at the Ministry of Labor and Social Protection believed that the law did not apply to disputes and strikes which had begun before that date. United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Feb. 14, 1991, at 2 (Feb. 14, 1991) (on file with author).

demands.<sup>216</sup>

Rather than sparking widespread trade union action in defiance of Law 15/1991, this disregard of the Supreme Court's decision instead marked the beginning of the end of the era of major strikes. There was a final flowering of work stoppages in May and June 1991, the chief one occurring at the Faur factory in Bucharest.<sup>217</sup> Although that strike was eventually settled through the personal intervention of Prime Minister Roman,<sup>218</sup> government officials threatened the strikers with Law 15/1991, warning that their objectives were illegal because they were political and threatening the organizers with liability for damages.<sup>219</sup> Another dispute during this period, a one-day work stoppage by rail workers, actually led to the filing of a damages suit, discharges, and criminal charges against union leaders.<sup>220</sup>

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216. United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Feb. 22, 1991, at 1 (Feb. 22, 1991) (on file with author). The striking railway workers subsequently requested that the Supreme Court reconsider its February 15 ruling. United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Feb. 27, 1991, at 1 (Feb. 27, 1991) (on file with author). The Supreme Court ultimately did so and, on April 12, 1991, it canceled its February 15 order, holding that, since the strike was discontinued, the case was moot. United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Apr. 13, 1991, at 7 (Apr. 15, 1991) (on file with author). This decision is curious since it presumably precluded any claims by the railroads for damages arising from the illegal continuation of the strike beyond the February 15 order. Perhaps this preclusion was the point of the ruling, however, to avoid resolving knotty questions of the law's applicability as well as of its apparent flouting by the railway workers.

217. Faur is one of the biggest factories in Bucharest. The workers at another large Bucharest facility, the IMGB factory, had struck in mid-May because the company managers fixed salaries without prior negotiations. United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, May 15, 1991, at 3 (May 15, 1991) (on file with author). They returned to work after three days, when a number of measures were taken to meet their demands. United States Embassy (Bucharest), Daily Press Summary, DIMINEAȚA, May 21, 1991, at 1, 2 (May 21, 1991) (on file with author). Several weeks later, on June 6, their colleagues in the Unitatea trade union at the Faur plant began a strike, insisting that their demands were economic and related to the workplace, but also seeking the dismissal of the company's directors. United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, June 7, 1991, at 2 (June 7, 1991) (on file with author). They were joined by several other unions at Faur. United States Embassy (Bucharest), Daily Press Summary, ADEVĂRUL, June 8, 1991, at 7 (June 10, 1991) (on file with author); United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, June 12, 1991, at 2 (June 12, 1991) (on file with author). IMGB workers and those at a Craiova-based heavy equipment factory walked out in solidarity with the Faur workers on June 12, in apparent violation of Law 15/1991's exclusion of such strikes. United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, June 13, 1991, at 2; Realitatea, June 13, 1991, at 1 (June 13, 1991) (on file with author).

218. On June 18, after the Faur workers had staged a huge march in Bucharest, Prime Minister Roman met with them and negotiated enough of a settlement that they agreed to return to work. United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, June 19, 1991, at 2 (June 19, 1991) (on file with author).

219. Dan Ionescu, *Labor Unrest Escalates*, Report on Eastern Europe (Radio Free Europe, July 12, 1991), at 21-22.

220. United States Embassy (Bucharest), Daily Press Summary, ADEVĂRUL, June 22, 1991, at 2; DREPTATEA, June 22, 1991, at 4 (June 24, 1991) (on file with author); *Railway Union Federation Leader Accused of Disloyalty*, BBC Summary of World Broad-

In the midst of this time of high tension, the Alfa Cartel, having formed an alliance called the National Confederative Association with several smaller labor organizations,<sup>221</sup> announced a general strike for the express purpose of forcing the dismissal of the government.<sup>222</sup> Although the threatened strike attracted considerable attention, it was a total failure. Only 3,000 turned out for a June 18, 1991 rally at which 30,000 people were expected<sup>223</sup> and the general strike, which was set for the next day, never materialized.<sup>224</sup>

Although a few isolated walk-outs continued to take place in apparent disregard of Law 15/1991,<sup>225</sup> for the most part the trade union movement abandoned confrontation through strikes after the summer of 1991. It is supremely ironic, therefore, that the government of Prime Minister Petre Roman was driven from office shortly thereafter, a victim of the single most violent labor dispute since the NSF's rise to power in December 1989. The old allies of the NSF, the League of Jiu Valley Miners, had become unhappy with the government's failure to meet their economic demands after their defense of the regime in May 1990. They began a strike in mid-September 1991, which their leader, Miron Cosma, insists was processed through the initial stages in strict compliance with the requirements of Law 15/1991.<sup>226</sup> Deciding to take their demands to the heart of government, approximately 10,000 miners

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casts (Rompres in English, June 20, 1991) June 25, 1991, available in LEXIS, Europe Library, Alleur File. The Bucharest Municipal Court held that two of the four trade union federations involved had violated Law 15/1991. *Transportation Strikes Declared Illegal*, BBC Summary of World Broadcasts (Rompres in English, July 26, 1991) July 31, 1991, available in LEXIS, Europe Library, Alleur File; United States Embassy (Bucharest), Daily Press Summary, ADEVĂRUL, July 27, 1991, at 5 (July 29, 1991) (on file with author).

221. *Trade Union Confederations Form National Association*, BBC Summary of World Broadcasts (Rompres in English, June 7, 1991) June 11, 1991, available in LEXIS, Europe Library, Alleur File. According to the communique released by the National Confederative Association, its goal was to force parliament and President Iliescu to dismiss the prime minister and his government and institute a new economic and social program. *Id.*

222. *One-Day Rail Strike; Industrial Unrest Elsewhere*, BBC Summary of World Broadcasts (Rompres in English, June 18, 1991) June 22, 1991, available in LEXIS, Europe Library, Alleur File.

223. *Lower Turn-out than Expected at Anti-Government Rallies in Bucharest*, BBC Summary of World Broadcasts (Rompres in English, June 18, 1991) June 25, 1991, available in LEXIS, Europe Library, Alleur File.

224. Peter Humphrey, *Romanian Premier Tours Industry to Calm Labour Unrest*, The Reuter Library Report, June 19, 1991, available in LEXIS, Europe Library, Alleur File. The strike threat was raised again in early July, *Strike Threat Renewed by Romanian Union*, L.A. TIMES, July 3, 1991, at A11, but once more, nothing materialized.

225. A strike in August 1991 at the Zărnești armaments factory was also declared illegal, but the strikers ignored the court's ruling and continued the strike, ultimately achieving many of their demands, including replacement of enterprise management. United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Aug. 15, 1991, at 2; Aug. 22, 1991, at 2 (Aug. 15, 1991; Aug. 22, 1991) (on file with author).

226. Interview with Miron Cosma, *supra* note 43; see also United States Embassy (Bucharest), Daily Press Summary, ROMÂNIA LIBERĂ, Sept. 5, 1991, at 2 (Sept. 5, 1991) (on file with author) (Cosma begins negotiations with the government over salary and allowance issues; strike threatened for September 23).

descended upon Bucharest in the fourth "mineriada." From September 24-28, 1991, the miners, joined by thousands of Bucharest residents, attacked government buildings with fire-bombs, held mass rallies, and generally took the city and the government hostage.<sup>227</sup> Faced with the most serious threat to national stability since he came to power, Prime Minister Roman and his cabinet "submitted their mandate" to President Iliescu, who promptly accepted it as a resignation and appointed a new coalition government headed by Teodor Stolojan, a widely respected economist and member of the Roman government.<sup>228</sup>

Although many of the leaders of the major trade union organizations sympathized with the miners' objectives and blamed the government for the carnage caused by the "mineriada," they were clearly, and publicly, repulsed by the violence which accompanied it.<sup>229</sup> This stunning outburst of physical force was the final act in the labor movement's efforts to change the policies of the NSF through strikes or physical confrontation, at least at the time of this writing. Since that time, the major confederations have concentrated their efforts on peaceful negotiations with the government, and have successfully concluded three major national-level collective bargaining contracts, resolving such issues as minimum wages and perhaps even laying the foundation for changes in the existing Labor Code.<sup>230</sup> In addition, labor leaders have participated regularly in on-going discussions with the government to establish agreed levels of salary indexation and minimum wages as a way of soft-

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227. See, e.g., *Miners' Rally in Romania Stirs Riots*, N.Y. TIMES, Sept. 26, 1991, at A3.

The official response to the miners' assault on the government was not processed within the parameters of Law 15/1991. Rather, the government treated the assault as an extraordinary affair of state and, as such, it was the subject of a parliamentary investigation. The report of the parliamentary commission which conducted this investigation called upon the police, prosecutors and courts to process the events of the "mineriada" as a criminal prosecution. *Parliamentary Commission Blames TU Leader Cosma for Miners' Events*, BBC Summary of World Broadcasts (Romanian Radio, Bucharest, Mar. 19, 1992), Mar. 24, 1992, available in LEXIS, Europe Library, Alleur File. Subsequently, the police investigators submitted a file to the prosecutors proposing criminal prosecution of Miron Cosma and one other activist on the charge of undermining state power under Article 162 of the Criminal Code. *Police Accuse Miners' Leaders of "Undermining" State*, BBC Summary of World Broadcasts (Rompres in English, May 18, 1992) May 21, 1992, available in LEXIS, Europe Library, Alleur File.

228. See *Prime Minister of Romania Steps Down*, N.Y. TIMES, Sept. 27, 1991 at A3; *Romanian Miners Hold Out for President's Resignation*, N.Y. TIMES, Sept. 28, 1991, § 1, at 3; Mary Battiatu, *Romanian Coal Miners Go Home; Premier Rejects Chance to Form New Cabinet*, WASH. POST, Sept. 29, 1991, at A25; Carol J. Williams, *Free-Market Economist Appointed as Romania's New Prime Minister*, L.A. TIMES, Oct. 2, 1991, at A4.

229. The author attended the September 26, 1991 session of Frăția's first national congress, held in Bucharest on September 23-27, 1991. During the Congress, Frăția's President, Miron Mitrea, announced the fall of the Roman government and stated both Frăția's sympathy with the miners' objectives and its rejection of their violent tactics.

230. Cf. *Collective Labour Contract Signed with Three Trade Union Groups*, BBC Summary of World Broadcasts (Rompres in English, Mar. 18, 1992) Mar. 20, 1992, available in LEXIS, Europe Library, Alleur File (first contract negotiated at such a level in Romania; "[i]t stipulates the first real rights and duties of Romanian employees.").

ening the effects of price liberalization and inflation.<sup>231</sup>

It would be misleading to claim that the demise of the strike was purely a product of the sanctions of Law 15/1991. Many other factors played important roles in this phenomenon. After the "mineriada" and the installation of the new government, all sides agreed it was in no one's interest to destabilize Romanian politics. The government, as well as the trade unions, made it a policy to engage in dialogue and to keep tensions down. In fact, when the trade unions pressed issues such as minimum wages in early 1992, Prime Minister Stolojan threatened to resign, a bluff that the labor leaders were unwilling to call.<sup>232</sup>

Nonetheless, the strictures of Law 15/1991 have played a central role in the disappearance of major strikes from the Romanian political scene. The government's (technically the enterprise managements') willingness to use the law and seek damages against trade union organizers is not an insignificant concern.<sup>233</sup> As the author observed during numerous conversations with Romanian trade unionists, they are all aware of the statute's restrictions. Every labor organization, from confederation level to local trade unions, has a staff lawyer participating in its deliberations. Romanian lawyers, in turn, interpret statutes in a very cautious and conservative fashion, and are quick to label actions unlawful, instead of searching for legal loopholes which will permit the trade unions to pursue their objectives in an arguably lawful manner.

Perhaps the best illustration of the trade unions' grudging acceptance of the need to comply with Law 15/1991 is the response of the railway workers to the strike suspension decision the Supreme Court, handed down against them on May 19, 1992. In stark contrast to the cavalier disregard of that tribunal's similar order in February 1991, on this occasion the strike organizers moved quickly to terminate the strike, declaring, "We have always claimed that we are living in a rule-of-law state and have to prove that we will respect the principles of such a state."<sup>234</sup>

This reluctance to take on the strike statute seems to be a major factor in the process which has led the trade unions to pursue other alternatives. These alternatives include not only the aforementioned collective bargaining initiatives under Law 13/1991, Collective Labor Contracts, but also, in recent months, moves to support political parties that are willing to support labor's agenda legislatively, thus offering the

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231. See, e.g., *Stolojan Chairs Cabinet Meeting on Salary Issues*, BBC Summary of World Broadcasts (Rompres in English, Jan. 18, 1992) Jan. 21, 1992, available in LEXIS, Europe Library, Alleur File (discusses negotiations with trade unions over minimum salaries and wage indexation).

232. Interview with Victor Giorbea, *supra* note 129.

233. Several damages actions were pending against railroad unions in the district court for Sector One in Bucharest in early 1992. Interview with Magistrate Daniela Lupaş, *supra* note 177.

234. *Supreme Court of Justice Suspends Rail Strike*, BBC Summary of World Broadcasts (Romanian Radio, Bucharest, May 19, 1992) May 27, 1992, available in LEXIS, Europe Library, Alleur File.

promise of changing Law 15/1991 itself.<sup>235</sup>

## Conclusion

Although a new government took power following the national elections on September 27, 1992,<sup>236</sup> the legal status of collective labor disputes will probably remain essentially unchanged in the immediate future. It is unlikely that the new leaders will dramatically alter the general parameters of the economic program begun under Prime Minister Roman and pursued with perhaps even more determination by his successor, Prime Minister Stolojan. The most noticeable change is that the pace of transition has slowed somewhat. A relatively gradual transfer of ownership from the government to private hands should continue in the old state industries, extending over a period of five to ten years. There would then be every incentive to maintain the legal regulations which prevent broad political challenges to the government's stewardship of the non-privatized industries.

Even though new private sector businesses are playing an increasingly important role in the economic life of the country, it is unlikely that they will initiate modification of Law 15/1991 either. It is of course conceivable that private employers will chafe under the mandatory arbitration powers given to the Ministry of Labor and Social Protection, when disputes arise in which the interests of the government and of the private enterprise are not congruent. On the whole, however, a statute largely intended to shield the government as employer from destabilizing labor unrest should work well in private hands. There is certainly

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235. Frăția, the Alfa Cartel and CNSLR participated in the creation of the Convention of Social Solidarity, a political party with a social democratic platform. See *Party Founded to Protect Rights of Employees*, BBC Summary of World Broadcasts (Rompres in English, Apr. 23, 1992) Apr. 27, 1992, available in LEXIS, Europe Library, Allleur File; *Convention of Social Solidarity Gathers in Bucharest with Trade Union Backing*, BBC Summary of World Broadcasts (Rompres in English, Aug. 23, 1992) Aug. 28, 1992, available in LEXIS, Europe Library, Allleur File. The National Trade Union Bloc (BNS), the fourth important national confederation, signed a pre-election pact with the main opposition coalition, the Democratic Convention. *National Trade Union Bloc and Democratic Convention Sign Agreements*, BBC Summary of World Broadcasts (Rompres in English, Sept. 23, 1992) Sept. 26, 1992, available in LEXIS, Europe Library, Allleur File.

236. President Iliescu easily won re-election, with approximately sixty percent of the popular vote. *Ex-Communist Leader Re-elected in Romania*, N.Y. TIMES, Oct. 13, 1992, at A13. His party, the National Salvation Front, had split into two major parties at its March 1992 convention. Petre Roman retained control of the NSF, keeping its social democratic reformist tendencies. *Party Backs Romanian Premier*, N.Y. TIMES, Mar. 29, 1992, § 1, at 6. A new party was formed, the Democratic National Salvation Front (DNSF), composed chiefly of more conservative supporters of President Iliescu and his go-slow approach to economic reform. *22nd December Pro-Iliescu NSF Splinter Group Registered as "Democratic NSF"*, BBC Summary of World Broadcasts (Romanian Radio, Bucharest, Apr. 30, 1992) May 2, 1992, available in LEXIS, Europe Library, Allleur File; *Democratic NSF Denies It Is Antif-JRoman or Prof-JIliescu*, BBC Summary of World Broadcasts (Rompres in English, May 7, 8, 1992) May 13, 1992, available in LEXIS, Europe Library, Allleur File. The new government was drawn primarily from the ranks of DNSF supporters.



no reason to believe that private business would be interested in loosening its strictures. The difficulty of beginning and conducting a lawful strike under Law 15/1991, as it currently stands, is as well suited to private as to government interests.

The National Salvation Front achieved its short-term goal of ending labor's use of strikes to challenge the government's management and policies. In the long-term, Law 15/1991 will continue to discourage labor activism, even as Romania's owners change slowly from public entities to private entrepreneurs.